

**EXHIBIT 4**

THE HONORABLE THOMAS S. ZILLY

**U.S. DISTRICT COURT**

**FOR THE WESTERN DISTRICT OF WASHINGTON**

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,  
Plaintiff,

vs.

JOHN DOE, subscriber assigned IP address  
73.225.38.130,  
Defendant.

JOHN DOE, subscriber assigned IP address  
73.225.38.130,  
Counter-claimant,

vs.

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,  
Counter-defendant.

**Case No. 2:17-cv-01731-TSZ**

**MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF NON-INFRINGEMENT OF  
COPYRIGHT AND ATTORNEYS' FEES  
AND COSTS**

**NOTING DATE: August 23, 2019**

**ORAL ARGUMENT REQUESTED**

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1 Pursuant to the Court's July 8, 2019 order (ECF 167), Defendant, JOHN DOE, subscriber  
2 assigned IP address 73.225.38.130, ("John Doe" or "Defendant"), moves for summary judgment  
3 against Plaintiff Strike 3 Holdings, LLC d/b/a Blacked.Com, Tushy.com, and Vixen.com ("Strike  
4 3" or "Plaintiff"), pursuant to FRCP 56 and as a matter of law, and contingent on the Court's  
5 determination of summary judgment in Doe's favor, moves for a discretionary award of attorneys'  
6 fees and costs in the amount of \$ 48,773.13 as the prevailing party under the Copyright Act.

7 **STATEMENT REGARDING COURT'S ORDER ON JULY 8, 2019**  
8 **REGARDING THE CONSENT JUDGMENT**

9 Counsel for Strike 3 and John Doe met and conferred on July 15, 2019. Strike 3 was  
10 unwilling to agree to enter a stipulated consent judgment of non-infringement, which would have  
11 allowed Doe to brief the issue of attorneys' fees only. As a consequence, John Doe addresses  
12 both the issues of non-infringement and attorney fees.

13 **INTRODUCTION**

14 John Doe was—and still is—faced with potential liability of \$13,050,000.00, the  
15 maximum amount of statutory damages available under the Copyright Act (87 works x 150K in  
16 statutory damages) for copyright infringement, because Strike 3 has refused to dismiss its  
17 allegations against Doe with prejudice. Strike 3 speculates someone else did it, maybe John Doe  
18 Jr.

19 As a result, John Doe seeks summary judgment on his counterclaim for declaration of  
20 non-infringement, for which Strike 3 alone bears the burden of proof. As explained below, Strike  
21 3 cannot meet its burden because Strike 3's evidence supporting infringement, the "IPP System,"  
22 is unreliable, and contrary to Tobias Fieser's statement that John Doe downloaded the entire  
23 movie from IP address 73.225.38.130, Strike 3 has admitted the IPP System cannot prove that  
24 anyone using Doe's IP address downloaded complete copies of Strike 3's works. Also, Comcast  
25 returned business records that show the IP address connected to the alleged infringement was  
26 assigned to John Doe for a period of just 12 days, during which IPP captured hash values related  
to only six of the 87 works at issue. Also, Strike 3 cannot explain why the IPP system did not  
record PCAP data for the 10 of the 87 works. In short, John Doe has clearly negated the elements  
Strike 3 needs to prove infringement.

1 Strike 3 had an opportunity to exit from this case early on. They could have accepted  
2 declarations of non-infringement in February, 2018 and walked away unscathed by entering a  
3 dismissal with prejudice. Strike 3 declined to do so. Presumably, Strike 3 thought it could follow  
4 its standard sue-then-settle model to extract a settlement from John Doe. But John Doe, an ex-  
cop, is one tough cookie. John Doe is one of principled few who will not “pay off” Strike 3.

### 5 SUMMARY

6 Copyright infringement requires proof of three elements: (1) Does Strike 3 own the works;  
7 (2) did the allege infringer copy the works; and (3) was there damage. *Feist Publications v. Rural*  
8 *Telephone Service Co.*, 499 U.S. 340, 361 (1991). Strike 3 has the burden of proof on these three  
elements even on a declaratory relief of non-infringement.

9 Discovery is closed. Even with pending motions, there are no triable issue of fact of John  
10 Doe’s infringement. John Doe’s expert reports state this: the IPP System is unreliable and Strike  
11 3 should not be depend on the IPP System and that the unreliable data produced was *de minimus*.  
12 Strike 3 did not rebut this evidence because their expert Patrick Paige, did not take the time to  
read John Doe’s expert reports.

13 This case began with Strike 3’s reliance on the IPP System, an uncertified and  
14 incompletely tested computer system that results in an unacceptably high false positive rate.  
15 Emilie Kennedy admitted this in the District of New Jersey. Still, Strike 3 has sued thousands of  
16 persons, imposing improper litigation on 2 out of every 3 defendants. John Doe is one of the  
17 thousands of persons that have been improperly sued.

18 This case would have ended in February, 2018 if Strike 3 had accepted declarations of  
19 non-infringement by John Doe and his wife. This case could also have ended in August, 2018, if  
20 Strike 3 had dismissed their claim with prejudice. Instead Strike 3 persisted. Even in April 2019,  
21 Jessica Fernandez, Strike 3’s in-house counsel, would not affirm that John Doe was off the hook.  
22 Just two weeks ago, Strike 3, threatened to revive the claim against John Doe under alternate  
theories of infringement. Strike 3’s “dismissal with prejudice” was just as illusory as IPP’s ability  
23 to detect the infringements.

24 Copyright infringement allows for statutory attorney fees to the prevailing party in the  
25 Court’s discretion. (ECF 167, pg. 6) ; 17 USC 505; *Glacier Films (USA), Inc. v. Turchin*, 896  
26 F.3d 1033 (9th Cir., 2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 195 L.Ed.2d  
368, 118 U.S.P.Q.2d 1770 (2016). Recognizing the Court’s discretion in this matter and recent

precedent from *Glacier Films*, John Doe respectfully requests an award \$ 48,773.13 in fees and costs. Strike 3 may have an interest in protecting its copyrights, but that interest should be counterweighed against the high false positive rate and the fact the software used to detect the infringements is not “forensic software”. Further, as shown in the deposition of Patrick Paige, Strike 3’s expert, Strike 3 has no actual knowledge that the IPP System “works”.

This is the first case that has investigated the technical underpinnings of Strike 3’s dubious claims of infringement that have been replicated nationwide. The balance of interests under *Kirtsaeng* and *Glacier* recognize that meritorious defenses are just as important as vindicating infringements.

### **FACTUAL BACKGROUND**

#### **A. STRIKE 3’S ALLEGATIONS OF INFRINGEMENT AND THEIR MULTIMILLION DOLLAR CLAIM AGAINST JOHN DOE**

On November 16, 2017, Strike 3 sued John Doe, subscriber IP Address 73.225.38.130, for copyright infringement, alleging that Doe infringed 80 pornographic movies (ECF 1). Strike 3 claimed they had been monitoring John Doe’s IP address, *Id.* at ¶ 23-24, using a system made by “IPP.” Plaintiff also claimed “Plaintiff knows of no way to effectively prevent Defendant from infringing Plaintiff’s motion pictures.” *Id.* at ¶30. Strike 3’s prayed for statutory damages and attorney fees. *Id.* Strike 3 claimed that John Doe was liable for statutory fees that ranged from a minimum of \$60,000.00 to a maximum of \$12,000,000.00.

On November 29, 2017, Strike 3 moved for permission to engage in early discovery of John Doe’s identity from Comcast. Strike 3’s motion (ECF 4) was based on Strike 3’s representation that it hired an investigator, IPP, to monitor and detect the infringement of Strike 3’s content. According to Strike 3, the IPP System discovered that Defendant’s IP address was illegally distributing several of Strike 3’s motion pictures (Works). Strike 3 stated that an “independent forensic expert”, John S. Pasquale, examined one of the PCAPs sent by IPP. (ECF 4, pg 6). As it turns out, Mr. Pasquale is no expert. (See Initial Disclosures, Ex. 20). Strike 3 never designated John S. Pasquale as one of its experts. Mr. Pasquale never filed an expert report. And during Mr. Pasquale’s deposition, he admitted that contrary to Strike 3’s representations, that he never communicated with IPP. Specifically:

**10 A I know of them, but do I know them?**

**11 No. Have I had a conversation with them? No.**

**12 Q Do you use email communications**

13 with anybody at IPP?

14 A No.

15 Q Who sends you the PCAP?

16 A Paul does.

17 Q Your nephew?

18 A My son. Philip is my nephew.

19 Write it down. (Ex. 3, Pasquale Depo 22:3-23:18)

Later, when Mr. Pasquale was in front of a Federal Judge in New Jersey he further confirmed that he receives the data not from IPP, or directly from the IPP System, but after it has been handled and possibly manipulated by Strike 3 personnel.

**THE COURT: The information that you received, did you receive it directly from IPP or from Strike 3?**

**MR. PASQUALE: From Strike 3.** (ECF 150-7, pg. 90)

Strike 3 also filed declarations to support its motion by: Greg Lansky, Susan Stalzer, John Pasquale, and Tobias Fieser as evidence to support their claim for infringement. (ECF 4-1 to 4-4). These declarations contained either material misstatements of fact or outright false statements.

Tobias Fieser falsely claimed that IPP had accessed John Doe's computer and downloaded an entire copy of the movie from the IP address. (ECF 4-3 ¶ 9 "IPP's software additionally analyzed each Bittorrent "piece" distributed by Defendant's IP Address. It verified that reassembling the pieces using a specialized BitTorrent client results in a fully playable movie.")

Strike 3's in-house attorney, Emilie Kennedy, recently contradicted Tobias Fieser's form declaration in open court that the allegation that John Doe downloaded complete copies of the works was inaccurate. Instead, Strike 3 relies on bit field value evidence of only "between 50 and 70 percent..." for each movie. (ECF 150-7 at 99:25-103:8.) And while Strike 3 has been working with IPP to "figure out if there's a way to get that full copy of the movie from the subscriber," IPP's software currently cannot "download[] a hundred percent of the movie from the subscriber." *Id.*

Mr. Fieser also declared under penalty of perjury that "IPP [] confirmed through its ancilliary BitTorrent surveillance program that IP address 73.225.38.130 is associated with significant long term BitTorrent use." (ECF 4-3, ¶12.) Mr. Fieser also gave the misimpression that the IPP system used at the Bellwhether trial in 2013 is somehow the same used in this case (ECF 4-3, ¶6.) Yet, in his deposition, Mr. Fieser testified that the software used now is different than in 2013 (Ex. 7, 147:12-148:16) and that he did not know the IP addresses of the IPP Servers

1 (Ex 7, 154: 22-155:5) despite working there for 10 years (Ex. 7, 24:8-14). Mr. Fieser's  
2 declaration is pro-forma and nearly identical to thousands of other declarations filed in thousands  
3 of actions across the country. In reality, the IPP System downloaded, at the most, 0.015% from  
4 an unidentified computer at that IP address. (See Garcia-Paeth Expert Report, Ex. 8.) Nowhere  
5 in Mr. Fieser's declaration does he explain why the IPP System could not record PCAPS for 10  
6 out of the 87 works. (*Id.*).

7 Susan Stalzer, the real estate agent/copyright "comparer", relied on a "verification  
8 system" which was undisclosed in her declaration. Ms. Stalzer also communicated with "Sud"  
9 (aka "Sid") an individual who was not identified on Strike 3's initial disclosures. (Ex. 2, Stalzer  
10 Depo 37:10-38:5; 128:16-21; 149:24-150:30) Stalzer's connection to Strike 3 is not based on her  
11 experience as a "comparer", a title given to her by Fox Rothschild (*Id.* 61:12-16), in her prior  
12 job, she worked for Malibu Media proofreading emails for Emilie Kennedy. (*Id.*, 11:15-14:5).

13 **B. THE COURT ISSUES A PROTECTIVE ORDER STATING THAT JOHN DOE'S IDENTITY**  
14 **SHOULD NOT BE REVEALED BY THE ISP.**

15 On January 25, 2018 this Court issued a protective order that the Does' name should not  
16 be revealed by the ISP to the Plaintiffs. (ECF 8.) On March 5, 2018, this Court issued broader  
17 protective order requiring Plaintiff's to keep Doe's identity confidential. (ECF 20.)

18 **C. JOHN DOE RETAINS COUNSEL AFTER TRYING TO LOCATE SEVERAL LAWYERS IN THE**  
19 **SEATTLE AREA.**

20 On February 10, 2018, John Doe's counsel responded to Strike 3's lawyer stating:

21 ....My client and his wife are willing to provide declarations that they did not  
22 download the films as alleged in your complaint. If that is acceptable, then I would  
23 like to provide your client with the opportunity to dismiss this action with  
24 prejudice and my client will waive costs.... (Ex. 1).

25 On February 14, 2018, John Doe's counsel informed Bryan Case of Fox Rothschild that  
26 the IPP software had false positives. (Ex. 4.) Fox Rothschild and Bryan Case later withdrew  
from representation.

1 On March 8, 2018, John Doe filed a declaration with this Court stating he did not infringe.  
2 (ECF. 25-21.). John Doe brought a counterclaim for declaratory relief of non-infringement. (ECF  
3 22.)

4 Strike 3 filed an amended complaint alleging infringement of 87 works. (ECF 43).

5 John Doe answered and counterclaimed. (ECF 32.) Strike 3 dismissed their claim of  
6 infringement without prejudice. (ECF 53.)

7 Strike 3 challenged this counterclaim by a motion to dismiss which was partially granted  
8 and denied by this Court as to the counter-claim of copyright misuse. ECF 58.)

9 **D. STRIKE 3'S PRODUCES A PAUCITY OF EVIDENCE SUPPORTING THEIR INFRINGEMENT**  
10 **CLAIMS**

11 On August 9, 2018, John Doe requested documents from Strike 3 in support of their  
12 infringement claims. (ECF 53). Rather than turn over those documents, Strike 3 opposed the  
13 motion. (ECF 54).

14 Five months later, in January, 2019, Strike 3 produced the following documents  
15 supporting their claims for infringement:

- 16 • Control Copies of the Movie;
- 17 • Alleged Infringed Works'
- 18 • PCAP's (Packet Captures) of the IPP monitoring system
- 19 • Torrent Files
- 20 • Copyright Certificates (Edmondson Decl., ¶39 )

21 Doe hired an expert to analyze this data. (Ex. 11, Garcia-Paeth Expert Report.). Far from  
22 proving Strike 3's claim that Doe had downloaded complete copies of Strike 3's works, Expert  
23 Garcia-Paeth reported that the sum of the raw data of the PCAP's equaled approximately %  
24 0.0015 of the raw data. *Id.*

25 **E. KEY WITNESSES ARE DEPOSED**

26 As John Doe was still faced with the possibility of further claims for infringement, John  
Doe deposed Stalzer, Pasquale, Lansky, and Fieser. Strike 3 also deposed John Doe, who in no  
uncertain terms, denied having downloaded Strike 3's works. (Deposition of John Doe, Ex. 29,  
210:1-10). Strike 3 also deposed John Doe's son who stated he had no knowledge of Strike 3's  
works. (Deposition of John Doe, Jr, Ex. 30, 30:10-22, 46:2-47:23.)

**F. EXPERT REPORTS ARE FILED**

On March 15, 2019, John Doe filed four expert reports. (Ex. 8-11) Strike 3 filed two expert reports on March 15, 2019. (Ex. 12-13) John Doe filed a rebuttal expert report and an amended expert report on April 15, 2019. (Exhibits 14-15).

Dr. Toth, explained in the summary of his expert report regarding the validity, reliability, and correctness of the IPP software with regard to it being "forensic software":

**In my experience, creating a software system without technical specifications or testing may be suitable to implement a web site for one's book club, but is not nearly good enough to build forensics software that can harm the heal and safety of innocent bystanders (Ex. 8, page 1).**

**In other words, the IPP software is unproven and should not be trusted for the forensic purposes as contemplated. (*Id.*)**

Brandon Garcia-Paeth explained in the summary of his expert report about his analysis of the PCAP data, for which Strike 3 started this copyright infringement lawsuit:

**My analysis of the data shows that in each pcap only a very small percentage of the file was downloaded. One or two torrent pieces (16kb each) was downloaded in most cases. In a few of the pcaps no piece download was shown. (Ex. 11, page 3).**

Michael Yasumoto explained in the summary of his expert report of his analysis of the ASUS hard drive used by the retiree, John Doe:

**None of the video files reviewed from the Defendant's hard drive are the Plaintiff's movies based on the video subject matter or the SHA1 hash. (Ex. 10, page 4).**

**G. STRIKE 3'S EXPERT PATRICK PAIGE IS DEPOSED**

Patrick Paige, who Strike 3's designated as an expert on verification of the IPP System was deposed on June 27, 2019. (Ex. 16.) The deadline for expert reports was March 15, 2019 and two documents were submitted on behalf of Patrick Paige by Strike 3. (Ex 13.)

At the deposition Mr. Paige testified he was never asked to prepare an expert report for this case:

**22 Q. I'm talking about an expert report for this  
23 specific case. Were you ever asked to prepare an  
24 expert report specifically for this case?  
25 A. No. (Paige Depo, 5:22-25)**



1 Patrick Paige also testified that he did not reference any known methodology to construct  
2 a test. (*Id.* 78:14-79:8.)

3 Patrick Paige's report extensively references using computer systems for child  
4 pornography investigations to draw an analog to his investigations in this case. (Ex. 16). When  
5 asked why Patrick Paige was no longer working at the Palm Beach Police department, he states  
6 he left for a "work comp" claim

7 **...I left the sheriff's office for -- in reference  
8 20 to PTSD, child pornography related; a workers' comp  
9 21 complaint was involve in it also. (Ex 16,Paige Depo, 67:12-21.)**

10 This was not completely accurate. Mr. Paige left due to circumstances of his felony arrest  
11 for drug possession using police property. (Ex 17.)

12 Strike 3's designated another expert, Stephen Bunting. Buntings' qualifications are  
13 similar to Patrick Paige's. Patrick Paige testified that he has known Mr. Bunting for many years  
14 and has used Bunting on his expert reports but never mentioned that in his expert report. (Paige  
15 Depo, 47:23-49:5.)

16 **H. COMCAST TURNS DOCUMENTS TO LINK THE IP ADDRESS TO THE SUBSCRIBER FOR A**  
17 **PERIOD OF 12 DAYS.**

18 Strike 3 then issued a Rule 45 Subpoena to Comcast. In response, Comcast produced  
19 documents that could only correlate John Doe's IP address for a period of 14 days from August  
20 30, 2019 to September 12, 2019. (Ex. 18.) These dates, which correlate with six works described  
21 in the attachment to Strike 3's amended complaint (See entries #1, 13, 32, 60, 64, 87; ECF 43-1),  
22 are far less than the 87 works Strike 3 alleges were infringed.

23 **I. ANALYSIS OF JOHN DOE'S ASUS HARD DRIVE**

24 Most importantly, Doe's expert, Yasumoto, analyzed his computer on March 6, 2018.  
25 Yasumoto's methodology was not objected to by either Paige or Bunting by way of a rebuttal  
26 expert report. Strike 3 did not notice Yasumoto's deposition.

Yasumoto used string search and file reconstruction techniques on the hard drive in the  
ASUS computer which included looking for deleted and undeleted files. Yasumoto concluded that  
the Strike 3 files did not exist on the ASUS hard drive. (Yasumoto Expert Report, Ex. 10).

1 **J. PROCEDURAL STATUS**

2 On July 8, 2019, this Court issued partial judgment on the pleadings on abuse of process.  
3 (ECF 168). The Court ordered the parties to meet and confer as to a stipulated entry of judgment  
4 of non infringement and attorney fees. *Id.*

5 On July 15, 2019 the parties met and conferred and could reach a resolution. On July 16,  
6 2019, Strike 3's counsel sent an email contending that Strike 3 could still bring John Doe back  
7 into the case under a theory of contributory infringement. (Ex. 4.)

8 **ARGUMENT**

9 **A. SUMMARY JUDGMENT STANDARD**

10 Summary judgment is proper where the pleadings and discovery demonstrate that there is  
11 "no genuine dispute as to any material fact[,] . . . the movant is entitled to judgment as a matter  
12 of law." FRCP 56(a); *see Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248 (1986). The judgment  
13 sought shall be rendered if the pleadings, discovery and affidavits demonstrate the absence of a  
14 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

15 Strike 3 bears the burden of proof in a declaratory relief action for non-infringement. *Medtronic*  
16 *Inc. v. Bos. Scientific Corp.*, 695 F.3d 1266,1272 (Fed. Cir., 2012); *Medtronic, Inc. v. Mirowski*  
17 *Family Ventures, LLC*, 134 S.Ct. 843, 187 L.Ed.2d 703, 82 USLW 4067 (2014). On an issue for  
18 which the opposing party will have the burden of proof at trial, as is the case here, the moving  
19 party need only point out "that there is an absence of evidence to support the nonmoving party's  
20 case." *Celotex*, 477 U.S. at 325.

21 Once the moving party meets its initial burden, the nonmoving party must go beyond the  
22 pleadings and set forth specific facts showing that there is a genuine issue for trial. FRCP 56(e).  
23 *In re Napster, Inc. Copyright Litigation* 377 F.Supp.2d 796, 800 (N.D. Cal., 2005).

24 **B. JOHN DOE IS ENTITLED TO PARTIAL SUMMARY JUDGMENT OF NON-INFRINGEMENT**  
25 **OF THE 87 WORKS BECAUSE THERE ARE NO TRIABLE ISSUES OF FACT OF INFRINGEMENT**  
26 **AND UNDER THE DOCTRINE OF JUDICIAL ESTOPPEL AND AS A MATTER OF LAW**

Proof of copyright infringement requires two general elements: one, ownership of a valid  
copyright; and two, copying of constituent elements of the work that are original. *Feist Pubs.*,  
*Inc. v. Rural Tel. Serv. Co., Inc.* 499 US 340, 361 (1991).

Strike 3 must also prove that Doe volitionally created a copy of its works, *Malibu Media, LLC. v. Bui*, 1:13-cv-00162 (W.D. Mich. 2014) (“As long as Defendant engaged in a volitional act that led to creation of the unauthorized copy, he is responsible for it despite a lack of detailed understanding”), and that the copy created is substantially similar to the original copyrighted work. *Malibu Media LLC. v. Doe*, 2:14-cv-01280 (E.D. Pa. 2015) (“Here we determine as a matter of law that there was no improper appropriation because no reasonable jury, properly instructed, could find that the data snippet bears a “substantial similarity” to Strike 3’s copyrighted work.”).

Strike 3 still needs to show that John Doe infringed. This evidence can be demonstrated by either finding the actual files on John Doe’s computer or indirectly by showing that the IPP System was accurate, stable, and reliable enough to determine that John Doe downloaded the 87 works at issue.

**1. STRIKE 3 DOES NOT HAVE AN ADMISSION FROM JOHN DOE THAT HE INFRINGED THE WORKS**

One way to prove that infringement is to have the Defendant admit that he or she downloaded the works. See *QOTD Film Inv., Ltd. v. Wilson* C16-0371RSL, Order March 3, 2017 (W.D. Wash., 2017). Discovery is closed and John Doe’s deposition was taken. John Doe expressly denied downloading the works at issue. (Deposition of John Doe, Ex. 28, 210:1-10)). So has John Doe’s son. (Deposition of John Doe, Ex. 29, 46:2-47:23; 30:10-22).

While Strike 3 and Greg Lansky may think their films are widely known, they are, in fact, not well known or widely visit by the general public. A recent article entitled “Characterizing Web Pornography consumption from passive measurements” quantified the top ten porn websites and none of Strike 3’s brands are identified. (Ex. 26, page 11).

**2. STRIKE 3 HAS NO DIRECT EVIDENCE THAT DOE INFRINGED THE WORKS FROM THE HARD DRIVE**

Evidence of infringement can be proven either directly or indirectly. *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1117 (9th Cir., 2018). In this case there is no direct evidence of infringement.

John Doe identified a single computer, ASUS, that he used on a daily basis for internet surfing. Immediately after notice of this suit, the drive was preserved by Doe’s hard drive expert, Michael Yasumoto. (Ex. 10, Yasumoto Report).

1 Michael Yasumoto is a forensics expert who examined the ASUS hard drive. His search  
2 methodology is documented in his timely filed report. His conclusion was that there were no  
3 Strike 3 movies on the hard drive.

4 Strike 3 employed two hard drive experts, Paige and Bunting, who are presumptively  
5 competent at the methodology used by Mr. Yasumoto for Hard Drive inspections. Neither Paige  
6 nor Bunting objected to the methodology used by Yasumoto in generating his report. (Edmondson  
7 Decl, ¶33.)

8 **3. STRIKE3 HAS NO INDIRECT EVIDENCE THAT JOHN DOE INFRINGED AS THE DATA**  
9 **FROM STRIKE 3'S IPP SYSTEM CANNOT BE RELIED UPON TO PROVE INFRINGEMENT**

10 The law requires proof of copying – namely, a copy. *JCW Invs., Inc. v. Novelty, Inc.* 482  
11 F.3d 910, 914 (7th Cir. 2007). Strike 3 has zero evidence of copying, and can point to no full  
12 copy that was made. Circumstantial evidence that IP address 73.225.38.130 may have been  
13 involved in copying is not the same as the copy itself.

14 Strike 3's complete failure is that it has no admissible, relevant evidence to prove an  
15 essential element of its case. As a result, John Doe is entitled to summary judgment of non-  
16 infringement. *Celotex Corp.*, 477 U.S. at 322.

17 To demonstrate infringement by inference, Strike 3 must show: 1) the IPP System is  
18 accurate, 2) IPP System gathered sufficient data from the IP address to reconstruct the work, and  
19 3) evidence that John Doe was the one operating the computer system from which the data was  
20 collected. Because Strike 3 cannot carry its burden as to any of these elements, Doe is entitled to  
21 summary judgment on his counterclaim for declaration of non-infringement.

22 **3.1 THE IPP SYSTEM IS NOT ACCURATE SOFTWARE THAT AN EXPERT CAN RELY UPON**  
23 **UNDER DAUBERT.**

24 To determine if the data from the IPP System can be relied by the trier of fact to infer that  
25 infringement occurred at this IP address, one must analyze each step linking the data from the  
26 collection of swarm data on the internet to the potential infringer.

The IPP Software used to monitor the internet must operate reliably and generate data that  
an expert witness can rely upon. Under principles of *Daubert*:

- Has the IPP software that is generally accepted in the scientific community?
- Is IPP software been subjected to peer review and publication?
- Can and was the IPP Software tested?

- Does IPP Software's know the potential rate of error and is it acceptable?
  - Was the testing of the IPP software conducted independent of the particular litigation or dependent on an intention to provide the proposed testimony?
- See Daubert v. Merrel Dow Pharmaceuticals, Inc.* 43 F.3d 1311 (9th Cir. 1995); *S.V. Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 789 (7th Cir., 2017) .

Evidence gathered by a computer system is subject to the same *Daubert* limitations as testimony provided by a live expert. (*Ex. 21; Software on the Witness Stand: What should it Take for Us to Trust It* (2010) TRUST 10 Proceedings of the 3rd International Conference on Trust and Trustworthy Computing, pgs. 396-416.) This article describes the technology and the resulting forensic investigation surrounding the music filesharing case of *UMG Recordings, et. al vs. Roy* (D.N.H. 2008) 08-cv-00090, hereinafter "*Roy*".

In *Roy*, the defendant was accused of downloading songs based on an IP address with the "behind the scenes" investigation of the forensic system that led to the complaint of the infringement. What defendant *Roy*'s investigator found when they looked at the computer data was:

...Yet, at least in the case of the document that apparently purported to contain the traced route to the IP in the subpoena, the software obviously failed to operate correctly, as can be seen in Figure 7. The reason for this could have been either internal code faults or network configuration faults. *Software* at 4.

Central to Strike 3's copyright enforcement model is the use of the IPP software. In fact, IPP has been used to initiate all of Strike 3's 3000+ lawsuits. The problem with IPP's position is that is impossible to build a complex system using one designer to direct programmers to write "bug free" code. (See Ex. 15, Expert Report of Dr. Kalman Toth.) This conclusion was based on the fact that IPP has never had formal specifications, walkthroughs, formal testing, inspections, third-party validations, or documentation of failure modes. *Id.* There has never been a third-party paper written about the IPP technology.

Ultimately, the problem is that Mr. Fieser's livelihood is inextricably bound up in the operation of the IPP software. (Ex. 7, Fieser Depo, 24:8-14). Likewise, Patrick Paige's testimony was even more bizarre in that his declarations are filed in hundreds of Malibu cases without compensation or knowledge. (Ex. 16 Paige Depo) Neither Fieser nor Paige's testimony can be given any credibility as their livelihood is bound up on the operation of the IPP software. *United Sates v. Marine Shale Processors* (5th Cir. 1996) 81 F.3d 1361, 1370.

Neither Strike 3 nor IPP did not respond to the expert critique of IPP by Dr. Toth by way of rebuttal report.

This Court does not have to accept fantastic claims that are not grounded in scientific principles. In 2010, it was discovered that a respected investor, Bernie Madoff, delivered consistent results year after year only via a Ponzi Scheme. See *Stephenson v. Citco Grp. Ltd.*, (S.D.N.Y., 2010) 700 F.Supp.2d 599, 607. In 2015, it was discovered that Volkswagen used software to cheat on emissions tests. See generally *In re Volkswagen "Clean Diesel" Marketing, Sales, Practices, and Products Liability Litigation* (N.D. Cal. 2015) 16-cv-295. It is clear that software that is claimed to be "perfect" should raise greater questions than when it is shown to have a certain number of false positives with supporting test data.

**3.2 STRIKE 3's IPP SYSTEM ONLY DOWNLOADS A "DE MINIMUS" FILE FRAGMENT WHICH CANNOT SUPPORT INFRINGEMENT.**

To infringe, an infringer must create a copy that is "substantially similar" to the original. *Malibu Media. v. Doe*, 2:14-cv-01280 (E.D. Pa. 2015); see also Melville B. Nimmer and David Nimmer, *Nimmer on Copyright* (Matthew Bender, Rev. Ed. 2014) §13.03 [A], 38.1. A small fraction is not enough. *Ingenuity 13, LLC v. Doe*, 12-cv-08333 (C.D. Cal. Feb. 7, 2013). As Hon. Otis Wright stated in his order:

"This snapshot allegedly shows that the Defendants were downloading the copyrighted work—at least at that moment in time. But downloading a large file like a video takes time . . . To allege copyright infringement based on an IP snapshot is akin to alleging theft based on a single surveillance camera shot: a photo of a child reaching for candy from a display does not automatically mean he stole it." *Id.*

The tiny portion of a file that could be downloaded in one second is too small to be substantially similar to the original. Even if the hash value captured in the PCAP corresponds to a portion of a digital file that is "identical, strikingly similar or substantially similar to" [Plaintiff's] copyrighted work, there is nothing before the court that describes the audio/visual material that is represented by that hash value. Is it the entire movie or is it some portion so small that it would not be identifiable as part of the movie?"; see also *Malibu Media LLC. v. Doe*, 2:14-cv-01280 (E.D. Pa. 2015).

The only evidence Plaintiff has presented to support its claim that a copy was created at all at the instant IP address are PCAP files. These files purport to show one second of connection

between John Doe's IP address and Plaintiff's investigation service. (Expert Report or Garcia-Paeth, Ex. 11).

**3.3 JOHN DOE SHOULD BE GRANTED SUMMARY JUDGMENT AS THE IP ADDRESS DATA IN THE PCAP'S IS NOT ASSOCIATED WITH IPP COMPUTER AND THERE IS NO EVIDENCE LINKING AN IPP COMPUTER TO THE PCAP DATA**

Central to Strike 3's assertions of infringement is that the PCAP data is monitored by the IPP system and it can be affirmatively linked to an IP address.

When the Strike 3 PCAP's are inspected, the evidence is that this assertion is demonstrably false. A dump from Wireshark shows this data:

```
1 0.000000 192.168.0.13 73.225.38.130 TCP 66 64430->17966 [SYN] Seq=0 Win=8192 Len=0
MSS=1460 WS=4 SACK_PERM=1
Frame 1: 66 bytes on wire (528 bits), 66 bytes captured (528 bits)
Ethernet II, Src: fa:f7:05:6b:3e:b9 (fa:f7:05:6b:3e:b9), Dst: de:4e:0a:1a:08:11
(de:4e:0a:1a:08:11)
Internet Protocol Version 4, Src: 192.168.0.13, Dst: 73.225.38.130
Transmission Control Protocol, Src Port: 64430, Dst Port: 17966, Seq: 0, Len: 0
```

(PCAP Printout from Wireshark, Ex. 13).

The two IP addresses are 192.168.0.13 and 73.225.30.130. The first IP address, 192.168.0.13, is supposedly the IP address allocated to an IPP Computer.

The problem is IP address 192.168.0.13 is a non-routable IP address used for local communications within a private network. There is no data showing the IP address of the IPP computer. Therefore, PCAP data provided by IPP has no forensic value as there are no contemporaneous PCAP's or other chain of title documents linking IP address in the PCAP data to an IP address for the IPP computer.

John Doe requests entry of summary judgment of non-infringement because Strike 3 cannot use the IPP PCAP data because it does not link the IP address to a computer used by IPP.

**3.4 JOHN DOE SHOULD BE GRANTED SUMMARY JUDGMENT ON 81 OF THE 87 WORKS AS THEY CANNOT SHOW THAT THE IP ADDRESS WAS ALLOCATED TO JOHN DOE FOR THE PERIODS OUTSIDE OF 8/30/2017 TO 9/12/2017**

Comcast only returned evidence that John Doe was allocated the IP address from 8/30.2017 to 9/12/2017. During this time period only six works were reported infringed out of the eighty-seven.

1 Despite the fact that there is little to no evidence recorded by the IPP system for each  
2 individual work, Strike 3 may argue that this *de minimus* evidence alone is enough to “finger”  
3 John Doe.

4 Strike 3’s argument fails because Strike 3 cannot cite to any admissible evidence, via  
5 business records or otherwise, demonstrating that the IP Address was allocated to John Doe for  
6 the entire period of alleged infringement.

7 Without admissible evidence linking infringement to Doe’s IP address, the trier of fact is  
8 left to speculate what the IP address is during those periods of infringement. *Cafasso v. Gen.*  
9 *Dynamics C4 Sys. Inc.*, 637 F.3d 1047, 1061 (9th Cir., 2011) “To find liability on this evidence  
10 would require undue speculation. To survive summary judgment, a plaintiff must set forth non-  
11 speculative evidence of specific facts, not sweeping conclusory allegations..”) As such, the Court  
12 should grant summary judgment to Doe as to 81 of the 87 works. *Ventura Content, Ltd. v.*  
13 *Motherless, Inc.*, 885 F.3d 597, 607 (9th Cir. 2018) (...no factual dispute in the record cannot  
14 lead to reversal of MSJ due to speculation of appellants...); *see also Skidmore v. Led Zeppelin*,  
15 905 F.3d 1116, 1130 (9th Cir. 2018) (...court will not apply speculation when evidence at issue  
16 is dispositive...).

17 Therefore, John Doe respectfully requests summary judgment on all works except the six  
18 works found with the window from 8/30/2017 to 9/12/2017.

19 **4.0 JOHN DOE SHOULD BE GRANTED SUMMARY JUDGMENT UNDER THE DOCTRINES**  
20 **OF JUDICIAL ESTOPPEL AS STRIKE 3 CONTENDS JOHN DOE IS NOT THE**  
21 **INFRINGER.**

22 Factual assertions made in pleadings and briefs can be taken as judicial admissions. See  
23 *American Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224,226 (9th Cir., 1988) stating “ For purposes  
24 of summary judgment, the courts have treated representations of counsel in a brief as admissions  
25 even though not contained in a pleading or affidavit. *United States v. One Heckler-Koch Rifle*,  
26 629 F.2d 1250, 1253 (7th Cir.1980); 10A C. Wright, A. Miller & M. Kane, Federal Practice and  
Procedure Sec. 2723, pp. 64-66 (1983) (admissions in opponent's brief can be used to determine  
there is no genuine issue of fact, since they are functionally equivalent to "admissions on file").

Strike 3’s focus on this case, since as early as August, 2018, has been on John Doe’s son  
as the alleged infringer. (ECF 73, page 5 “..highly likely that Doe Jr. is the culprit.”

On February 2, 2019, Strike 3 made this following admission in its motion for partial  
summary judgment:



Strike 3 conducted a further investigation and then immediately dismissed its claims without prejudice once Strike 3 discovered that Defendant's adult son—who has the same name as Defendant—is most likely the infringer, not Defendant. (ECF 71, page 2)

But on April 12, 2019, Strike 3's counsel, Jessica Fernandez equivocated on the John Doe Jr's liability. (Ex. 6:245:1-247:25). This Court also noted in its order that Strike 3 indicated that it wanted to pursue John Doe's son (ECF 167, fn 3).

Absent evidence that John Doe and John Doe Jr. were working in concert (there is none), Strike 3 cannot simultaneously claim that John Doe and John Doe Jr. are the alleged infringers.

**5.0 STRIKE 3'S CLAIM OF INFRINGEMENT FAILS AS A MATTER OF LAW AS THEY FAILED TO MAINTAIN A CLAIM OF INFRINGEMENT**

The Western District of Washington has stated that "a counterclaim 'arises out of the same transaction or occurrence' as the underlying claim if the counterclaim meets the Ninth Circuit's 'logical relationship test'." *Wilson v. Discover Bank*, Case No. 3:12-ccv-05209-RBL (W.D. Wash. 2012) quoting *In re Lazar*, 237 F.3d 967 (9th Cir. 2001). Under the logical relationship test, "A logical relationship exists when the counterclaim arises from the same aggregate set of operative facts as the initial claim, in that the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights otherwise dormant in the defendant." *In re Pinkstaff*, 974 F.2d 113 (C.A.9 (OR) 1992). DOE has sought a declaratory judgment that it has not violated S3H's copyrighted material under the Federal Copyright Act. Strike 3 has dismissed their claims and has not filed a reply to the counterclaims. Strike 3's claims, now dismissed, arise from the same aggregate set of operative facts as DOE's request for declaratory relief that DOE did not infringe the 87 copyrights at issue in this case. (Dkt 43).

The Western District of Washington has held that a compulsory counterclaim arising under Fed. R. Civ. P. 13(a) must be asserted. *Carpenters Health and Security Trust of W.Wa, et al. v. Paramount Scaffold, Inc., et al.*, Case No. 12-1252-RSM (WDWA). Moreover, the Ninth Circuit has held that a party failing to plead its compulsory counterclaim is considered to have "waived such claim" and is estopped under the doctrine of *res judicata* from bringing such claim again. *Dragor Shipping Corp. v. Union Tanks Car Company*, 378 F.2d 241 (9th Cir. 1967). Further, the doctrine of judicial estoppel prevents a party from taking one position and then later

1 taking a second position. The objective of judicial estoppel is to preserve the integrity of the  
2 judicial process. In short, it is to avoid parties "playing fast and loose" with the judicial system.  
3 See *Helfand v. Gerson*, 105 F.3d 530, 534 (9th Cir 1997).

4 As held in *Carpenters Health supra*, a party is required to assert its compulsory  
5 counterclaim. Otherwise, a party waives such a claim under *Dragor*. Alternately, Strike 3 could  
6 have maintained their action for copyright infringement, filed a reply to the SACC even after  
7 dismissing their complaint.

8 Here Strike 3 has done neither. Strike 3 has waived its right to bring such a claim and is  
9 estopped under the doctrine of res judicata.

10 John Doe seeks declaratory relief that it has not violated any of Strike 3's alleged  
11 copyrights. In response, Thus, even if all the allegations in the complaint are taken as true, Strike  
12 3 has failed to assert a Federal Copyright Claim in response to John Doe's request for declaratory  
13 relief. Moreover, as a result of failing to even allege a claim for Copyright infringement in the  
14 FACC, Strike 3 has not meet the minimum standards under *Twombly* or *Iqbal*. Put simply, Strike  
15 3 has not asserted a claim that it is entitled to relief, let alone any facts in support thereof, that  
16 DOE violated its infringed it copyright(s). Therefore, John Doe's motion for declaratory relief  
17 should be granted as a matter of law.

18 John Doe respectfully requests that his Court entered judgment of non-infringement of the  
19 87 works as a matter of law for Strike 3's failure to maintain a compulsory claim of infringement.

### 20 ATTORNEY FEES

21 The Copyright Act contemplates an award of attorney fees and costs:

22 In any civil action under this title, the court in its discretion may allow the recovery  
23 of full costs by or against any party other than the United States or an officer  
24 thereof. Except as otherwise provided by this title, the court may also award a  
25 reasonable attorney's fee to the prevailing party as part of the costs.

26 17 U.S.C. § 505. Prevailing defendants as well as prevailing plaintiffs may be awarded attorney  
fees at the court's discretion. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994). "[A] successful  
defense of a copyright infringement action may further the policies of the Copyright Act every  
bit as much as a successful prosecution of an infringement claim by the holder of a copyright."  
*Id.* at 527.

Whether it is a direct action for copyright infringement, or declaratory relief action of non-infringement by a defendant, the owner of the copyright always has the burden of proof in an action for a declaratory judgment involving infringement of the copyright. *Marya v. Warner/Chappell Music, Inc.*, 131 F.Supp.3d 975, 983-984 (C.D. Cal., 2015) (citing *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 198-201 (2014) (“[t]he burden of persuasion is with the patentee, just as it would be had the patentee brought an infringement suit”)); *see also Williams v. Bridgeport Music, Inc.*, No. CV-13-6004-JAK (AGRx), 2014 WL 7877773, at \*10 (C.D. Cal. Oct. 30, 2014) (applying *Medtronic* to a declaratory judgment copyright case and concluding the defendants have the burden of proof).

Here, Strike 3 had the burden of proof regarding Doe’s claim for declaratory judgment of non-infringement. To meet its burden, Strike 3 was required to establish that Doe copied Strike 3’s works, *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991), which Strike 3 readily admits it cannot do. *See* ECF 43 ¶ 42 (Strike 3 is “unable to capture the full, or a playable portion of its motion picture”). Strike 3’s failure to establish that Doe copied its works is consistent with Dr. Kal Toth’s opinion that the software Strike 3 used in its investigation of alleged infringement is unreliable. As a result, Doe is the prevailing party.

**A. DOE REQUESTS AN AWARD OF ATTORNEYS’ FEES**

Courts routinely award prevailing defendants costs and fees under the Copyright Act. *See generally Omega S.A. v. Costco Wholesale Corp.*, 776 F.3d 692, 696 (9th Cir.), *cert. dismissed*, 136 S. Ct. 445 (2015) (affirming district court’s award of \$396,844.17 to defendant in a first sale copyright dispute); *Elf-man, LLC v. Lamberson*, No. 13-CV-0395-TOR, 2014 WL 11513119, at \*3 (E.D. Wash. Oct. 31, 2014) (awarding attorneys’ fees where defendant was forced to incur attorneys’ fees to defend against plaintiff’s claim); *Johnson v. Storix, Inc.*, No. 3:14-CV-1873-H-BLM, 2016 WL 4399317, at \*7 (S.D. Cal. Aug. 17, 2016) (awarding defendant fees even when plaintiff’s copyright case was non-frivolous); *City of Inglewood v. Teixeira*, No. CV1501815MWFMRWX, 2015 WL 6146269, at \*1 (C.D. Cal. Oct. 8, 2015) (awarding prevailing defendant’s pro bono counsel \$117,741 for defending an objectively unreasonable claim); *Lewis v. Activision Blizzard, Inc.*, No. C 12-1096 CW, 2014 WL 4953770, at \*4 (N.D. Cal. Sept. 25, 2014) (finding \$152,104.50 reasonably expended by defendant on an objectively unreasonable copyright claim, but reducing the award in view of plaintiff’s relative poverty); *Atl.*

1 *Recording Corp. v. Andersen*, No. CV 05-933 AC, 2008 WL 2536834, at \*3 (D. Or. June 24,  
2 2008) (awarding \$103,175 to a prevailing defendant in an Internet file sharing copyright case).

3 In determining whether fees should be awarded, courts may consider a nonexclusive list  
4 of factors, including degree of success obtained, frivolousness, motivation, objective  
5 unreasonableness (both in the factual and legal components of the case), the need in particular  
6 circumstances to advance considerations of compensation and deterrence, and whether the  
7 chilling effect of attorney fees may be too great or impose an inequitable burden on an  
8 impecunious party. *Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 766 (9th Cir. 2003) (citing  
9 *Fogerty*, 510 U.S. at 534, n. 19); *see also Wall Data Inc. v. L.A. Cnty. Sheriff's Dep't*, 447 F.3d  
10 769, 787 (9th Cir. 2006). On balance, these factors support an award of fees to Doe.

11 First, Strike 3 dismissed its copyright claim against Doe, and failed to meet its burden on  
12 Doe's counterclaim for declaration for non-infringement. It was not successful under the  
13 Copyright Act. Second, Strike 3's claim was frivolous. Using unmistakable language, Strike 3  
14 accused Doe, and Doe alone, of having infringed its works, all the while knowing that its  
15 investigator could never gather evidence to prove that Doe copied Strike 3's complete works.  
16 Third, Strike 3's motivation in bringing the lawsuit is part of its sue-and-settle model, which  
17 courts have increasingly criticized. Strike 3 has admitted that its lawsuits don't deter infringement.  
18 As a result, the ultimate purpose of the lawsuit was to extract money from Doe. Fourth, Strike 3  
19 has acknowledged that after it obtains a subscriber's identity through early discovery, Strike 3  
20 decides "not to move forward" "roughly about 35 to 40 percent of the time...." (ECF 150-7 at  
21 58:25-59:8.) It is unreasonable for Strike 3 to force innocent people like Doe to incur the  
22 unjustified expense of having to hire attorneys to defend unfounded allegations based on these  
23 odds.

24 Plaintiff requested statutory damages available under the Copyright Act for Doe's alleged  
25 infringement, but in the end, Plaintiff received nothing from Doe. "Because Plaintiff elected to  
26 cease its action short of proving its entitlement to relief, this factor weighs heavily in favor of  
awarding Defendant fees as the prevailing party." *Elf-man, LLC*, 2014 WL 11513119, at \*3.  
Finally, awarding fees to Defendant will not have a chilling effect on Plaintiff's other copyright  
claims. Plaintiff can pursue valid and well-founded copyright claims where warranted. "But  
Plaintiff cannot exact a pound of flesh simply by making defendants caught in its wide net expend

1 attorney fees to defend themselves, perhaps unjustifiably. This factor weighs in favor of an award  
2 of attorney fees.” *Elf-man, LLC*, 2014 WL 11513119, at \*3.

3 **B. Doe requests only reasonable attorneys’ fees incurred in defending Plaintiff’s claim**  
4 **and prosecuting Doe’s counterclaim for a declaration of non-infringement.**

5 **1. The Lodestar Establishes a Presumptively Reasonable Fee**

6 “In determining a reasonable attorney’s fee, the district court’s first step is to calculate a  
7 ‘lodestar’ by multiplying the number of hours it finds the prevailing party reasonably expended  
8 on the litigation by a reasonable hourly rate.” *McGrath v. County of Nev.*, 67 F.3d 248, 252 (9th  
9 Cir. 1995); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). There is a “strong presumption” that  
10 the lodestar amount constitutes a “reasonable” fee. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S.  
11 542, 553-54 (2010). Thus, “it should only be enhanced or reduced in ‘rare and exceptional cases.’”  
12 *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1119 n.4 (9th Cir. 2000) (quoting *Pennsylvania v. Del.*  
13 *Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986)); *see also Kerr v. Screen Extras*  
14 *Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (factors).

15 **2. Defendants’ Counsel’s Hourly Rates Are Reasonable**

16 For purposes of the lodestar determination, reasonable fees are “calculated according to  
17 the prevailing market rates in the relevant community, regardless of whether the plaintiff is  
18 represented by private or nonprofit counsel.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). “The  
19 relevant community is generally defined as the forum in which the district court sits.” *Van Skike*  
20 *v. Dir., Office of Workers’ Comp. Programs*, 557 F.3d 1041, 1046 (2009) (quotation marks and  
21 citation omitted). Thus, in assessing the rates requested by John Doe’s attorneys, the Court should  
22 look to market rates in the Western District of Washington.

23 “[A]ffidavits of the plaintiffs’ attorneys and other attorneys regarding prevailing fees in  
24 the community and rate determinations in other cases are satisfactory evidence of the prevailing  
25 market rate.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (internal marks  
26 omitted; quoting *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.  
1990)). The \$350 per hour rate upon which Mr. Edmondson seeks a fee award is consistent with  
rates charged by other lawyers in this community of similar skill and experience in similar cases.  
*See UN4 Prods., Inc. v. Primozech*, 372 F. Supp. 3d 1129, 1137 (W.D. Wash. 2019) (finding \$350  
per hour “is generally within the norm for BitTorrent cases in this district”); *ME2 Prods., Inc. v.*  
*Alexander*, No. C17-1221RSL, 2018 WL 4963247, at \*5 (W.D. Wash. Oct. 12, 2018) (same);

1 *BWP Media USA, Inc. v. Rich Kids Clothing Co., LLC*, No. 103 F. Supp. 3d 1242, 1250 (W.D.  
2 Wash. 2015) (finding \$350 hourly rate reasonable). *Getty Images (US) v. Virtual Clinics*, No.  
3 C13-0626JLR, 2014 WL 1744522, at \*3 (W.D. Wash. Apr. 29, 2014) (approving rates between  
\$275–\$385 per hour for attorneys in Seattle and \$180 per hour for paralegals).

4 Doe anticipates that Strike 3 will ask the Court to base any fee award on the reduced rate  
5 of \$50 an hour counsel charged Doe, rather than counsel's typical hourly rate in copyright matters  
6 of \$350 an hour. However, the determination of a reasonable hourly rate "is not made by reference  
7 to rates actually charged the prevailing party." *Chalmers v. City of Los Angeles*, 796 F.2d 1205,  
8 1210 (9th Cir. 1986). The Ninth Circuit has admonished district courts who determine the  
9 reasonableness of an hourly rate with reference to the rate actually charged. *See e.g., Schwarz v.*  
10 *Sec'y of Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir. 1995) ("This determination is not  
11 made by reference to rates actually charged the prevailing party. Rather, the Court should be  
12 guided by the rate prevailing in the community for similar work performed by attorneys of  
13 comparable skill, experience, and reputation.") (internal quotation marks and citation omitted);  
14 *see also Elf-Man, LLC v. Lamberson*, No. 13-CV-0395-TOR, 2015 WL 11112498, at \*7 (E.D.  
Wash. Jan. 9, 2015) (awarding fees based on standard billing rates which reflect counsel's  
respective experience and skill even though defendant's counsel charged a reduced rate).

15 3. **The Time Counsel Spent Defending Against Strike 3's Claim and**  
16 **Prosecuting the Declaration of Non-Infringement Counterclaim was**  
17 **Reasonable**

18 Counsel has filed detailed documentation of the time he spent on the copyright issues.  
19 Declaration of J. Curtis Edmondson re: Attorney Fees. With respect to work performed on the  
20 case up until August 2018, when Strike 3 dismissed its copyright infringement claim against Doe,  
21 depositions that took place between February and June 2019, and work performed since July 8,  
2019 in preparing Doe's motion for summary judgment, counsel respectfully seek payment of  
\$ 40,501.63 in fees.

22 Counsel's fee request does not include duplicative time incurred by other attorneys. A  
23 court may reduce the overall number of hours only when it makes specific findings that the work  
24 performed was "unnecessarily duplicative." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1113  
25 (9th Cir. 2008) (emphasis in original). "One certainly expects some degree of duplication as an  
26 inherent part of the process. There is no reason why the lawyer should perform this necessary  
work for free." *Id.* at 1112 (emphasis in original). Nonetheless, counsel have exercised billing

1 judgment and reduced their fees appropriately to exclude time by more than one attorney for the  
2 same task. For example, while two of Doe's attorneys attended most depositions, Doe only seeks  
an award of fees relating to the hours incurred by one of Doe's attorneys.

3 Likewise, counsel has excluded time spent on unsuccessful claims. *Sorenson v. Mink*, 239  
4 F.3d 1140, 1147 (9th Cir. 2001) ("The first step is to consider whether the [party] failed to prevail  
5 on claims that were unrelated to the claims on which he succeeded ... Hours expended on  
6 unrelated, unsuccessful claims should not be included in an award of fees.") (internal quotation  
7 marks and citation omitted); *Lahiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216,  
8 1222 (9th Cir. 2010) (noting that the fee award is limited to fees incurred in defending against a  
9 copyright infringement claim and excludes expenses for dismissed Lanham Act and unfair  
10 competition claims). For example, the fee requested excludes all time spent on summary judgment  
11 briefing related to Doe's counterclaim for abuse of process. Doe does not seek fees related to  
12 drafting or responding to written discovery. As to the depositions Doe took or defended, in  
addition to requesting fees for just one attorney, Doe seeks just 50% of the time expended by his  
13 attorney because the depositions were relevant to both of Doe's counterclaims.

14 In all, counsel's fee request is a very conservative lodestar based on work that was  
15 reasonably and necessarily expended to defend against Strike 3's copyright claim and  
prosecution Doe's counterclaim for declaration of noninfringement.

16 **D. Counsel Request Reimbursement of Taxable Costs**

17 Rule 54 provides that costs "should be allowed to the prevailing party." Fed. R. Civ. P.  
18 54(d)(1). The corresponding local rule provides that the following applicable procedures are to  
19 be observed in taxing costs:

- 20 • The attendance, travel, and subsistence fees of witnesses, for actual  
21 and proper attendance, shall be allowed in accordance with 28  
22 U.S.C. § 1821, whether such attendance was procured by subpoena  
or was voluntary; and
- 23 • All other costs shall be taxed in accordance with 28 U.S.C. §§ 1920,  
1921, 1923, 1927, and 2412. LCR 54(d)(3).

24 For purposes of this case, the relevant authority in the last bullet point is 28 U.S.C.  
25 § 1920. Under that statute, a judge or clerk of any court of the United States may tax as costs  
the following:

26 Fees of the clerk and marshal;

- (1) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (2) Fees and disbursements for printing and witnesses;
- (3) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (4) Docket fees under section 1923 of this title;  
Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

“[T]he Ninth Circuit has specifically held that explicit enumeration in § 1920 is not a prerequisite to allowance of a cost, reasoning that ‘courts are free to interpret what constitutes taxable costs’ under the statute.” *Lahrichi v. Lumera Corp.*, No. C04-2124C, 2007 WL 1521222, \*8 (W.D. Wash. May 22, 2007) (quoting *Alflex Corp. v. Underwriters Labs., Inc.*, 914 F.2d 175, 177 (9th Cir. 1990)). Plaintiffs move for an award of taxable costs incurred in litigating this case in the amount of \$ 68,236.

### 1. Filing Fees

Pursuant to Section 1920(1), Doe seeks \$ 0.00 for filing fees.

### 2. Deposition Costs

The costs associated with depositions, including depositions taken by the opposing party, are encompassed by section 1920(2). *See Alflex*, 914 F.2d at 177-78; *Indep. Iron Works, Inc. v. United States Steel Corp.*, 322 F.2d 656, 678-79 (9th Cir. 1963).

Doe seeks a total of \$ 8,271.50 in deposition costs. *See Summary of Fees and Costs*. This amount includes 50% of costs paid for original transcripts or copies, court reporter fees, and handling and delivery charges.

The deposition transcripts of the following individuals were necessarily obtained by Doe in order to prepare their case and prepare for examination or cross-examination of these witnesses at trial: Jessica Fernandez (as Rule 30(b)(6) witness for Strike 3), Greg Lansky, Susan Stalzer, Tobias Fieser, John Pasquale, and Patrick Paige.

### 3. Copy Costs

The costs associated with making copies of the ASUS hard drives were necessary for the subsequent analysis.



**CONCLUSION**

An attractive dropout from Stanford sells an incredible blood testing machine to Silicon Valley investors. For 12 years she is lauded as the next Steve Jobs. No one asks to double check whether Elizabeth Holme's machines work. There are no published scientific articles or validation studies on the Theranos machines. When investigators or insiders ask questions about the machine's accuracy, they are threatened by David Boies and his legal team. Everyone knows about the Theranos scandal and the scientific fraud the Edison machines were.

This is the first case where a "John Doe" has had to exposed the *Potemkin village* known as the "IPP Software.". Like Theranos, there has been no independent validation studies and no evidence that the IPP Software is "forensic software". Quite the opposite, the PCAP data generated by the IPP Software is insufficient and missing, which calls into question why any Bittorrent litigant would use this flawed product.

To get to the point of determining if the IPP software was generating accurate data to refute Strike 3's claim of copyright infringement and foreclose future lawsuits took time and money. John Doe's counsel have pro-rated their time and costs, and have picked an appropriate lodestar and have cut the time allocated to the infringement actions significantly.

Doe respectfully requests that this Court grant this motion for summary judgment of non-infringement of copyrights and award attorney fees and costs in the amount of \$ 48,773.13.

Respectfully submitted,

Dated: July 29, 2019

/s/ J. Curtis Edmondson

J. Curtis Edmondson (WA# 43795)

Attorney for Defendant John Doe

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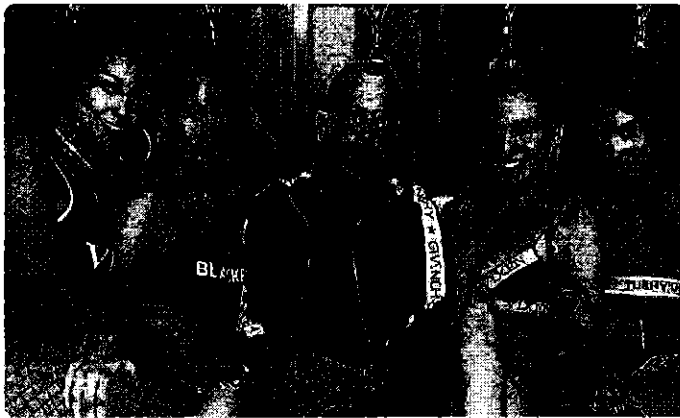
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**ALM Media**

February 18, 2019



*Strike 3 Holdings co-owner Greg Lansky with adult film performers at the 2017 AVN Adult Entertainment Expo in Las Vegas. (Photo: Shutterstock.com)*

A Fox Rothschild partner is taking heat again over his work for a porn maker that's been dubbed a "copyright troll."

Lincoln Bandlow is scheduled on Wednesday to argue in a Sacramento federal court that he should not pay sanctions for missing deadlines in roughly 25 cases in which he represents pornography producer Strike 3 Holdings Inc.

Los Angeles-based Bandlow has represented Strike 3 Holdings in roughly 2,500 copyright infringement lawsuits the company has filed since late 2017. The lawsuits accuse unnamed internet users of stealing Strike 3's videos through the online platform BitTorrent. The vast majority of cases settle.

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- Bullied 10-year-old apparently takes own life as family blasts school officials who 'didn't have time': report



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Copyright lawsuits filed nationally last year, Lex Machina data

show. The second most copyright complaints were filed in 2015, when 5,219 were brought.

The litigation campaign has come under judicial scrutiny before. A Washington, D.C.-based federal judge in November tossed a Strike 3 lawsuit and said Fox Rothschild was overseeing a "high-tech shakedown" that "treats this court not as a citadel of justice, but as an ATM." Fox Rothschild has filed an appeal in that case.

In another case in Washington state, Bandlow and Strike 3 are fighting a counterclaim that alleges they file lawsuits "with no intention to litigate" and are engaged in "extortion through sham litigation." That case is set for trial in September.

The most recent sanctions hearing in Sacramento came as a result of Bandlow and Strike 3 failing to provide a status report related to at least 15 cases within a 45-day period. On Jan. 2, Magistrate Judge Carolyn Delaney ordered Strike 3 to explain why it shouldn't be sanctioned \$250 for missing those deadlines. At least 25 Strike 3 cases are at issue on Wednesday, according to a search of Strike 3's court dockets.

Bandlow said in court filings that Strike 3 failed to file the status reports because it had "encountered issues with its calendaring procedure" for cases in U.S. District Court for the Eastern District of California. He also said the filing mistakes were in part due to a lack of staff during the holidays and an inability to receive emails from the court.

In an interview with The American Lawyer, Bandlow said those status reports would not have had much information to share, since the first 45 days of these cases are often uneventful. After the cases are filed naming IP addresses as defendants, Strike 3 asks judges to issue subpoenas to internet service providers such as Comcast demanding they

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He also said a number of the court's docketing emails were caught in his assistant's spam filter, and he had technical issues with the federal court docketing software DocketBird. He said those issues were confined to the Eastern District of California and also confined within Fox Rothschild to his practice.

Bandlow voluntarily dismissed the cases in which he missed a deadline and told the court he would not file new cases in the Eastern District of California until he was able to fix the technical problems he was experiencing with the court.

"In essence, we've sort of sanctioned ourselves in a weird way because that is \$400 per filing, and all of that is down the drain," Bandlow said.

While Strike 3 has stayed away from Sacramento's federal court recently, it is still filing copyright infringement claims at a furious pace. In February alone, it has filed 60 cases, including four on Monday in the Southern District of New York. In total, the producer of pornographic brands that include Vixen, "Blacked" and "Tushy" is a plaintiff in 2,617 federal cases, according to a search of federal court records.

#### **More Reading:**

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**Fox Rothschild's Porn Client Drops Case Against Retired Police Officer**

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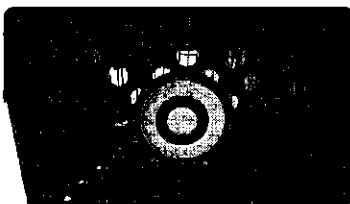


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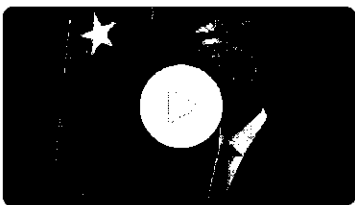
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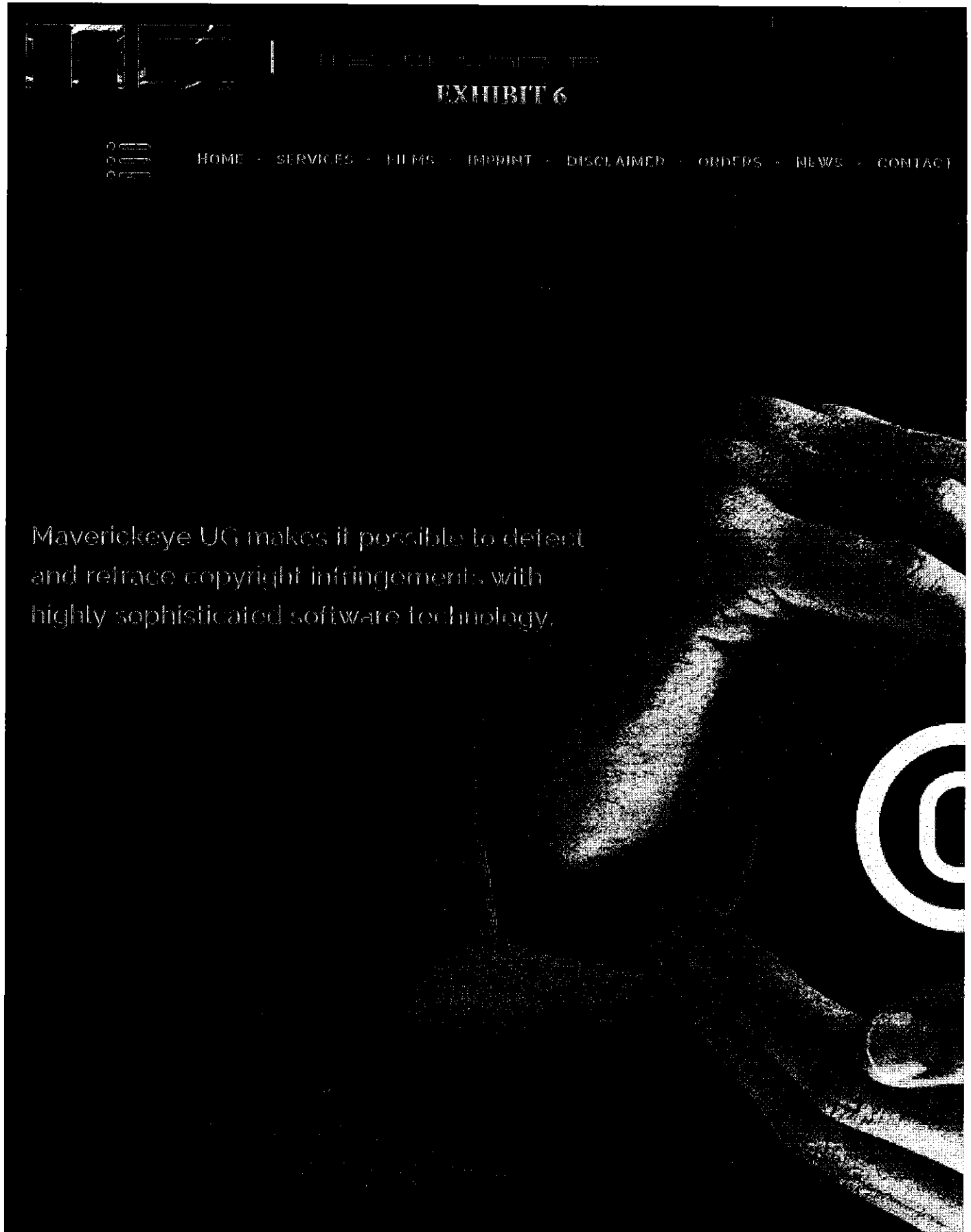


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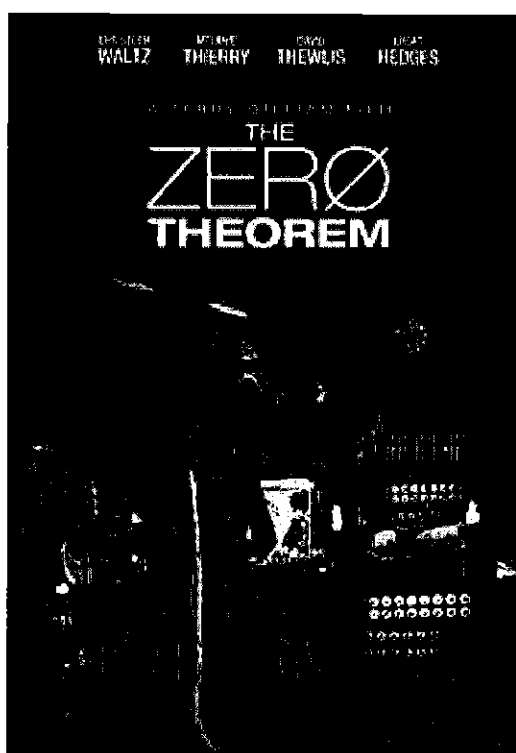
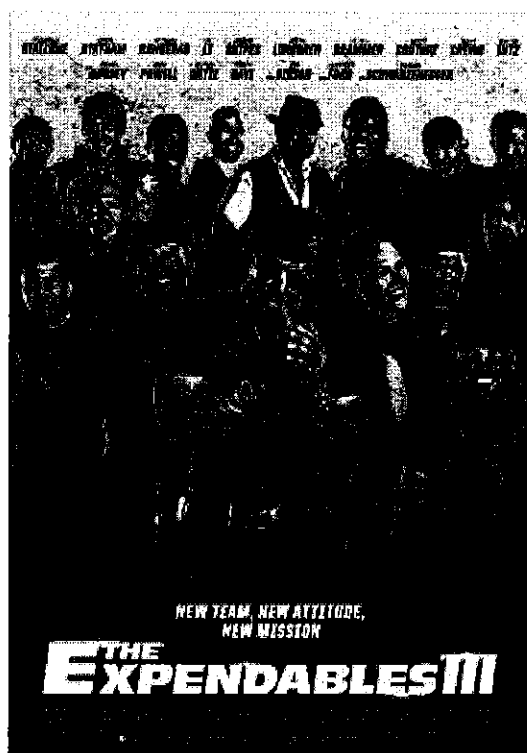
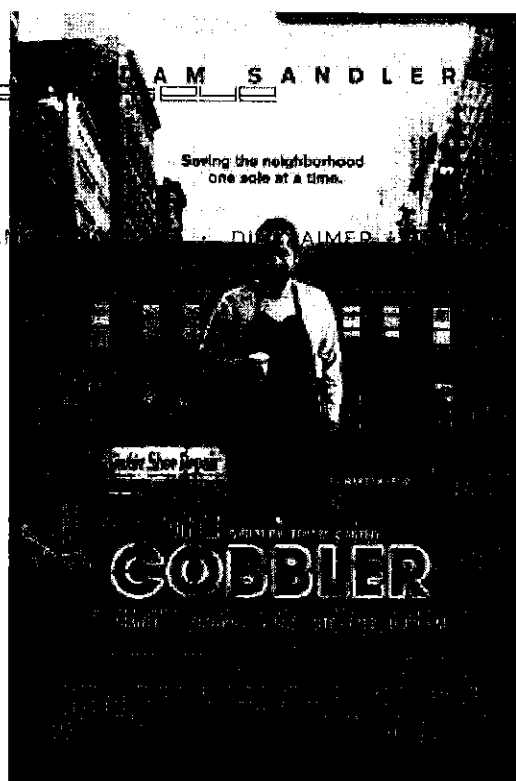
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**UK – TCYK Sealed Order**



**Finland – DBC Court Ruling**



**Singapore – Order of Court – OS 1168 of 2014**



**Judgment – Dallas Buyers Club LLC v iiNet Limited [ 2015 ] FCA 317\_1230230\_1 ( 2 )**



**Voltage Pictures vs Teksavy Reasons**



**Voltage Pictures vs Teksavy Order**



**Norwich Order Fax-Jul-28-2016-12-55-44-0399**

## CONTACT

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## EXHIBIT 7

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 21-cv-20862-BLOOM/Otazo-Reyes**

MILLENNIUM FUNDING, INC.,  
a Nevada corporation, *et al.*,  
Plaintiffs,

v.

1701 MANAGEMENT LLC d/b/a  
LIQUIDVPN, a Puerto Rico limited  
liability company, *et al.*,

Defendants.

---

### **ORDER**

THIS CAUSE came before the Court upon Plaintiffs MILLENNIUM FUNDING, INC., VOLTAGE HOLDINGS, LLC, AMBI DISTRIBUTION CORP., AFTER PRODUCTIONS, LLC, AFTER II MOVIE, LLC, MORGAN CREEK PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., BEDEVILED LLC, MILLENNIUM MEDIA, INC., COLOSSAL MOVIE PRODUCTIONS, LLC, YAR PRODUCTIONS, INC., FSMQ FILM, LLC, FW PRODUCTIONS, LLC, MILLENNIUM IP, INC., I AM WRATH PRODUCTION, INC., KILLING LINK DISTRIBUTION, LLC, 2 BADHOUSE STUDIOS, LLC, LF2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., VENICE PI, LLC, RAMBO V PRODUCTIONS, INC., RUPTURE CAL, INC., MON, LLC, SF FILM, LLC, SPEED KILLS PRODUCTIONS, INC., MILLENNIUM IP, INC., NIKOLA PRODUCTIONS, INC., WONDER ONE, LLC, BODYGUARD PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., GLACIER FILMS 1, LLC, DEFINITION DELAWARE LLC, HANNIBAL CLASSICS INC., JUSTICE EVERYWHERE PRODUCTIONS LLC, STATE OF THE UNION DISTRIBUTION AND COLLECTIONS, LLC,

PARADOX STUDIOS, LLC, DALLAS BUYERS CLUB, LLC, HITMAN TWO PRODUCTIONS, INC., SCREEN MEDIA VENTURES, LLC and 42 VENTURES, LLC's (collectively, "Plaintiffs") Notice of Hearing [D.E. 466]. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636 by the Honorable Beth Bloom, United States District Judge [D.E. 89]. The undersigned held a hearing on this matter on May 12, 2023. In accordance with the undersigned's rulings at the hearing, it is

ORDERED AND ADJUDGED that, by **May 26, 2023**, Judgment Debtor Charles Muszynski ("Mr. Muszynski") SHALL serve his answers and/or objections to Plaintiffs' First Set of Interrogatories, which are attached as Exhibit "A" to Plaintiffs' Notice of Hearing. See Ex. A [D.E. 466-1]. It is further

ORDERED AND ADJUGED that Mr. Muszynski's responses to Plaintiffs' Second Requests for Production Nos. 6 and 13 that he has no documents responsive to those requests are accepted as sufficient.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of May, 2023.

  
ALICIA M. OTAZO-REYES  
UNITED STATES MAGISTRATE JUDGE

cc: United States District Judge Beth Bloom  
Counsel of Record

## EXHIBIT 8

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No.: 21-cv-20862-BLOOM/Otazo-Reyes

MILLENNIUM FUNDING, INC., et al.,

Plaintiffs,

vs.

1701 MANAGEMENT LLC, et al.,

Defendants.

---

**PLAINTIFFS' SUPPLEMENTAL REPLY IN SUPPORT OF THEIR SECOND  
RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY  
JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR  
VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER AND FOR  
STANDING ORDER**

On April 26, 2023, Plaintiffs filed their Second Rewed Motion [Doc. #467] for Order to Show Cause why Judgment Debtors should not be held in civil contempt. On May 1, 2023, Judgment Debtor Muszynski filed documents entitled "MUSZYNSKI'S RESPONSE TO CULPEPPER'S DECLARATION EF #467 - ATTACHMENT 1" [Doc. #471] and "DEFENDANTS' THIRD REPLY TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE APRIL 11, 2023 ORDER; OBJECTION TO MOTION FOR STANDING ORDER;" [Doc. #472]. On May 2, 2023, Plaintiffs filed "PLAINTIFFS' REPLY IN SUPPORT OF THEIR SECOND RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER AND FOR STANDING ORDER" [Doc. #473]. Accordingly, per L.R. 7.1(c), briefing on the motion [Doc. #467] was closed on May 2, 2023.

Despite briefing on the motion [Doc. #467] being closed, on May 8, 2023, Judgment Debtor Muszynski filed "DEFENDANTS' FOURTH REPLY AND OBJECTION TO PLAINTIFFS' REQUEST FOR STANDING ORDER AND OBJECTION TO PLAINTIFFS'

SECOND RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER” [Doc. #477].

Not only does Judgment Debtor Muszynski’s Doc. #477 violate L.R. 7.1(c) because it is a sur-reply filed without leave of the court, Doc. #477 also violates Fed. R. Civ. P. 11(a) because Mr. Muszynski did not sign it (see pgs. 19 and 20). Nonetheless, the ECF entry for Doc. #477 states “Replies due by 5/17/2023. (ebz)”. Accordingly, out of an abundance of caution, Plaintiffs file this Supplemental Reply pointing out the deficiencies in Doc. #477. Of course, Plaintiffs and Plaintiffs counsels do not agree with Judgment Debtor Muszynski’s irrelevant and inflammatory allegations.

DATED: May 13, 2023

Respectfully submitted,

/s/ Joel B. Rothman  
JOEL B. ROTHMAN  
Florida Bar No. 98220  
joel.rothman@sriplaw.com

**SRIPLAW**  
21301 Powerline Road, Suite 100  
Boca Raton, FL 33433  
561.404.4350 – Telephone  
561.404.4353 – Facsimile

And

Kerry S. Culpepper  
*Admitted pro hac vice*  
**CULPEPPER IP, LLC**  
75-170 Hualalai Road  
Suite B204  
Kailua-Kona, HI 96740  
808.464.4047 – Telephone  
kculpepper@culpepperip.com

*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 13, 2023 and by the methods of service noted below, a true and correct copy of the foregoing was served on Defendants 1701 MANAGEMENT LLC d/b/a LIQUIDVPN, AUH2O LLC, and CHARLES MUSZYNSKI a/k/a FREDERICK DOUGLAS.

Via First Class Mail

Stolberg Law LLC  
Agent for 1701  
MANAGEMENT LLC  
151 Calle de San Francisco  
Suite 201  
San Juan, PR 00901

Via Airmail

Barret Venture Holdings,  
LLC  
Agent for AUH2O LLC  
The Providence House,  
Central Government Road  
Charlestown, Nevis

Via Airmail

CHARLES MUSZYNSKI  
Post Office Box 1423,  
Basseterre, St. Kitts & Nevis

Via E-mail


usfilefolder@protonmail.com

DATED: May 13, 2023

/s/ Joel B. Rothman  
JOEL B. ROTHMAN  
SRIPLAW

And

CULPEPPER IP, LLC

  
Kerry S. Culpepper

Virginia Bar No. 45292

Hawaii Bar No. 9837

CULPEPPER IP, LLC

75-170 Hualalai Road, Suite B204

Kailua-Kona, Hawai'i 96740

**EXHIBIT 8-A**

**UNITED STATES DISTRICT COURT SOUTHERN  
DISTRICT OF FLORIDA**

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

MILLENNIUM FUNDING, INC., et al.,

Plaintiff

vs.

1701 MANAGEMENT LLC, et al.,

Defendants.

**1.DEFENTANT'S THIRD DOCKET NOTICE OF BANKRUPTCY STAY**  
**2.RESPONSE AND OBJECTION TO INTERROGATORIES**  
**3.OBJECTION TO HEARING**

**1. THIRD NOTICE OF BANKRUPTCY STAY**

ALL PARTIES ARE HEREBY AGAIN NOTIFIED that the United States Bankruptcy Court for the Eastern District of Texas, Beaumont Division, entered an Order of relief on behalf of defendant(s)/debtor(s), CHARLES MUSZYNSKI.

The debtor(s)/Defendant(s) filed petition under Title 11, Chapter 7 of the United States Code in the United States Bankruptcy Court for the Eastern District of Texas, Beaumont Division, at 9:03 a.m. Central Time, on the 11<sup>th</sup> day of May, 2023. The Debtor(s) Case Number is: 23-90112.

Pursuant to Title 11, U.S.C. §362(a), all creditors of said Debtors are hereby stayed from the following as of the filing:

1. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the Debtors that arose before the commencement of the case under this title;

2. the enforcement, against the Debtors or against property of the estate, of a judgment obtained before the commencement of the case under this title;
3. any act to obtain possession of property of the estate or of property from the estate or to exercise control over the property of the estate;
4. any act to create, perfect, or enforce any lien against property of the estate;
5. any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
6. any act to collect, assess, or recover a claim that arose before the commencement of the case under this title against any claim against the Debtors;
7. the setoff of any debt owing to the Debtors that arose before the commencement of the case under this title against any claim against the Debtors; and
8. the commencement or continuation of a proceeding before the United States Tax Court concerning the Debtors.

Relief from the automatic stay may be sought by filing a Motion in the United States Bankruptcy Court, pursuant to 11 U.S.C. §362(d).

**VIOLATIONS OF THE AUTOMATIC STAY REFERENCED HEREIN MAY RESULT  
IN SANCTIONS.**

**2. RESPONSE AND OBJECTIONS TO INTERROGATORIES**

AN AUTOMATIC STAY HAS BEEN IN PLACE and Defendants object to the requirement to respond to interrogatories, object to Plaintiffs' failure to withdraw the hearing, and Plaintiffs' continued, willful violations of the automatic stay.

**INTERROGATORY NO. 1:** Identify each person or company who has prepared Muszynski's tax returns, provided tax service to a company controlled by Muszynski or provided Schedule K's to Muszynski from 1/1/2021 to present for any country in the world.

OBJECT. Violates the bankruptcy stay in place since 11 May 2023, presumes facts not

in evidence, nor lawfully before this Court, is contrary to facts already established, is overly broad, lacks specificity, and presumes Muszynski controls any company.

**INTERROGATORY NO. 2:** Identify each and every email address you have used from 1/1/2021 to the present and provide the login credentials (username and password).

OBJECT. Violates the bankruptcy stay in place since 11 May 2023, presumes facts not in evidence, nor lawfully before this Court, is overly broad, violates attorney/client privilege, lacks specificity, and reaches beyond the scope of the proceedings, and is another willful violation of the stay.

**INTERROGATORY NO. 3:** Identify every source of income/gross of over \$25,000 from 1/1/2021 to the present.

OBJECT. Violative of the bankruptcy stay in place since 11 May 2023, presumes facts not in evidence nor lawfully before this Court, is overly broad, lacks specificity, lacks timeframe, reference an indeterminate qualifying sum, and is another willful violation of the stay.

**INTERROGATORY NO. 4:** Identify each trust for which you are a beneficiary and the trustee name, address and contact information.

OBJECT. Presumes facts not in evidence, requires Debtor to violate laws in his Jurisdiction, is another willful violation of the stay.

### **3. OBJECTION TO SHOW CAUSE HEARING**

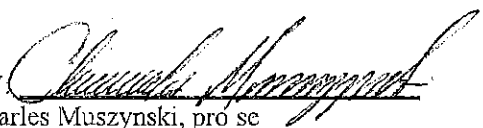


Defendants object to Plaintiffs' willful continuation of collection proceedings and activities, as lately evidenced by Plaintiffs' refusal to withdraw their unilaterally set Show Cause hearing on 1 June 2023 in Docket #486, (made without a meet and confer). Besides again willfully violating the stay, the Hearing is a redundant waste of the Court's time, needlessly repeats the same arguments as previously ruled upon by the Court on 12 May 2023, and exhibits Plaintiffs' continuation of vexatious lawfare since it serves no purpose other than assuagement of procedural concerns unrelated to the facts of the case.

WHEREFORE, Defendants request the Court honor the Federal Bankruptcy Stay in place since 11 May 2023 at 9:03 Central time by cancelling Plaintiffs' needless hearing.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have forwarded a true and correct copy of the foregoing to Plaintiffs' attorney by email to CulpepperIP, LLC, 75-5915 Walua Rd., Kailua Kona, Hawaii, 96740 via: [kculpepper@culpepperip.com](mailto:kculpepper@culpepperip.com); and mailed to the Clerk of Court, U. S. District Court, 400 North Miami Avenue, Miami, Florida, 33128; on this 22<sup>nd</sup> day of May 2023.

BY   
Charles Muszynski, pro se

[Usfilefolder@protonmail.com](mailto:Usfilefolder@protonmail.com)

P. O. Box 1423  
Basseterre, St. Kitts & Nevis

6/8/23, 5:15 PM

(1) Inbox | usfilefolder@protonmail.com | Proton Mail

## EXHIBIT 9

### Re: Response to interrogatories

From usfilefolder <usfilefolder@protonmail.com>  
To Kerry Culpepper <kculpepper@culpepperip.com>  
Date Thursday, May 25th, 2023 at 12:14 PM

You made the motion and can withdraw it, are you going to?

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Thursday, May 25th, 2023 at 11:58 AM, kculpepper culpepperip.com <kculpepper@culpepperip.com> wrote:

I did not set the hearing for June 1. The court set the hearing.

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---

**From:** usfilefolder <usfilefolder@protonmail.com>  
**Sent:** Thursday, May 25, 2023 5:55:30 AM  
**To:** kculpepper culpepperip.com <kculpepper@culpepperip.com>  
**Subject:** Response to interrogatories

Culpepper - see attached.

Is your intent, given the bankruptcy stay, to continue with the hearing you set for 1 June at 10:30 Eastern?

Cm

Sent with [Proton Mail](#) secure email.

**EXHIBIT 10**

**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF FLORIDA**

Case No.: 21-cv-20862-BLOOM/Otazo-Reyes

MILLENNIUM FUNDING, INC., et al.,

Plaintiffs,

vs.

1701 MANAGEMENT LLC, et al.,

Defendants.

---

**PLAINTIFFS' SUPPLEMENTAL REPLY IN SUPPORT OF THEIR SECOND  
RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY  
JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR  
VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER AND FOR  
STANDING ORDER**

On April 26, 2023, Plaintiffs filed their Second Rewed Motion [Doc. #467] for Order to Show Cause why Judgment Debtors should not be held in civil contempt. On May 1, 2023, Judgment Debtor Muszynski filed documents entitled "MUSZYNSKI'S RESPONSE TO CULPEPPER'S DECLARATION EF #467 - ATTACHMENT 1" [Doc. #471] and "DEFENDANTS' THIRD REPLY TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE APRIL 11, 2023 ORDER; OBJECTION TO MOTION FOR STANDING ORDER;" [Doc. #472]. On May 2, 2023, Plaintiffs filed "PLAINTIFFS' REPLY IN SUPPORT OF THEIR SECOND RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER AND FOR STANDING ORDER" [Doc. #473]. Accordingly, per L.R. 7.1(c), briefing on the motion [Doc. #467] was closed on May 2, 2023.

Despite briefing on the motion [Doc. #467] being closed, on May 8, 2023, Judgment Debtor Muszynski filed "DEFENDANTS' FOURTH REPLY AND OBJECTION TO PLAINTIFFS' REQUEST FOR STANDING ORDER AND OBJECTION TO PLAINTIFFS'

SECOND RENEWED MOTION [DOC. #467] FOR ORDER TO SHOW CAUSE HEARING WHY JUDGMENT DEBTORS SHOULD NOT BE HELD IN CIVIL CONTEMPT FOR VIOLATING THE JAN. 24, 2023 ORDER AND THE APRIL 11, 2023 ORDER” [Doc. #477].

Not only does Judgment Debtor Muszynski’s Doc. #477 violate L.R. 7.1(c) because it is a sur-reply filed without leave of the court, Doc. #477 also violates Fed. R. Civ. P. 11(a) because Mr. Muszynski did not sign it (see pgs. 19 and 20). Nonetheless, the ECF entry for Doc. #477 states “Replies due by 5/17/2023. (ebz)”. Accordingly, out of an abundance of caution, Plaintiffs file this Supplemental Reply pointing out the deficiencies in Doc. #477. Of course, Plaintiffs and Plaintiffs counsels do not agree with Judgment Debtor Muszynski’s irrelevant and inflammatory allegations.

DATED: May 13, 2023

Respectfully submitted,

/s/ Joel B. Rothman  
JOEL B. ROTHMAN  
Florida Bar No. 98220  
joel.rothman@sriplaw.com

**SRIPLAW**  
21301 Powerline Road, Suite 100  
Boca Raton, FL 33433  
561.404.4350 – Telephone  
561.404.4353 – Facsimile

And

Kerry S. Culpepper  
*Admitted pro hac vice*  
**CULPEPPER IP, LLC**  
75-170 Hualalai Road  
Suite B204  
Kailua-Kona, HI 96740  
808.464.4047 – Telephone  
kculpepper@culpepperip.com

*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 13, 2023 and by the methods of service noted below, a true and correct copy of the foregoing was served on Defendants 1701 MANAGEMENT LLC d/b/a LIQUIDVPN, AUH2O LLC, and CHARLES MUSZYNSKI a/k/a FREDERICK DOUGLAS.

Via First Class Mail

Stolberg Law LLC  
Agent for 1701  
MANAGEMENT LLC  
151 Calle de San Francisco  
Suite 201  
San Juan, PR 00901

Via Airmail

Barret Venture Holdings,  
LLC  
Agent for AUH2O LLC  
The Providence House,  
Central Government Road  
Charlestown, Nevis

Via Airmail

CHARLES MUSZYNSKI  
Post Office Box 1423,  
Basseterre, St. Kitts & Nevis

Via E-mail

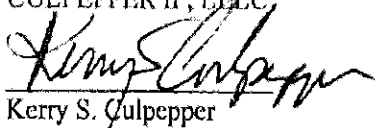
usfilefolder@protonmail.com

DATED: May 13, 2023

/s/ Joel B. Rothman  
JOEL B. ROTHMAN  
SRIPLAW

And

CULPEPPER IP, LLC

  
Kerry S. Culpepper

Virginia Bar No. 45292

Hawaii Bar No. 9837

CULPEPPER IP, LLC

75-170 Hualalai Road, Suite B204

Kailua-Kona, Hawai'i 96740

## EXHIBIT 11

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

MILLENNIUM FUNDING, INC.,  
a Nevada corporation, *et al.*,  
Plaintiffs,

v.

1701 MANAGEMENT LLC d/b/a  
LIQUIDVPN, a Puerto Rico limited  
liability company, *et. al.*,

Defendants.

---

### ORDER SETTING SHOW CAUSE HEARING

THIS CAUSE came before the Court upon Plaintiffs MILLENNIUM FUNDING, INC., VOLTAGE HOLDINGS, LLC, AMBI DISTRIBUTION CORP., AFTER PRODUCTIONS, LLC, AFTER II MOVIE, LLC, MORGAN CREEK PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., BEDEVILED LLC, MILLENNIUM MEDIA, INC., COLOSSAL MOVIE PRODUCTIONS, LLC, YAR PRODUCTIONS, INC., FSMQ FILM, LLC, FW PRODUCTIONS, LLC, MILLENNIUM IP, INC., I AM WRATH PRODUCTION, INC., KILLING LINK DISTRIBUTION, LLC, 2 BADHOUSE STUDIOS, LLC, LF2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., VENICE PI, LLC, RAMBO V PRODUCTIONS, INC., RUPTURE CAL, INC., MON, LLC, SF FILM, LLC, SPEED KILLS PRODUCTIONS, INC., MILLENNIUM IP, INC., NIKOLA PRODUCTIONS, INC., WONDER ONE, LLC, BODYGUARD PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., GLACIER FILMS 1, LLC, DEFINITION DELAWARE LLC, HANNIBAL CLASSICS INC., JUSTICE EVERYWHERE PRODUCTIONS LLC, STATE OF THE UNION DISTRIBUTION AND COLLECTIONS, LLC,

PARADOX STUDIOS, LLC, DALLAS BUYERS CLUB, LLC, HITMAN TWO PRODUCTIONS, INC., SCREEN MEDIA VENTURES, LLC and 42 VENTURES, LLC (collectively, "Plaintiffs") Second Renewed Motion for Order to Show Cause Why Default Judgment Debtors 1701 Management, LLC ("1701"), Charles Muszynski ("Muszynski"), and AUH20 LLC ("AUH20") (collectively, "Judgment Debtors") Should Not Be Held In Civil Contempt (hereafter, "Motion") [D.E. 467]. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636 by the Honorable Beth Bloom, United States District Judge [D.E. 432].

On March 28, 2022, the Court granted Final Default Judgment in favor of Plaintiffs and awarded a money judgment of \$15,172,403.00 in favor of Plaintiffs and against Defendants 1701 Management, LLC ("1701"), Charles Muszynski ("Muszynski"), and AUH20 LLC ("AUH20"). See Final Default Judgment [D.E. 213].

On January 24, 2023, the Court ordered that Judgment Debtors be held in civil contempt and that a fine of \$500/day be imposed upon each judgment debtor until they purge themselves of the contempt by completing Forms 1.977. See Order [D.E. 368]. On January 25, 2023, the Court further ordered Judgment Debtors to respond without objections to Plaintiffs' Request for Production and serve responsive documents on Plaintiffs' counsel by February 4, 2023, and to provide a location and time for the in-person deposition of Muszynski. See Order [D.E. 371].

On April 11, 2023, the Court ordered Muszynski to serve on Plaintiffs: a fully completed Form 1.977 for himself and for AUH20 in his capacity as its manager; and full responses without objection to Plaintiffs' pending Requests for Production. See Order [D.E. 457]. In their Motion, Plaintiffs maintain that Muszynski filed a Response [D.E. 464] with Forms 1.977 on behalf of himself, AUH20, and 1701 with numerous deficiencies. See Motion [D.E. 467 at 5]. Judgment Debtors oppose the Motion. See Response to Declaration [D.E. 471]; Third Reply to Plaintiffs'

Motion for Order to Show Cause [D.E. 472]; Fourth Reply and Objection to Plaintiffs' Request for Standing Order and Plaintiffs' Second Renewed Motion [D.E. 477].

Upon due consideration of the foregoing, it is

ORDERED AND ADJUDGED as follows:

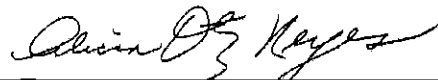
1. Judgment Debtors SHALL APPEAR via Zoom video conference before the undersigned on **Thursday, June 1, 2023 at 10:30 A.M.** to show cause why they should not be held in contempt for their failure to comply with the foregoing Orders [D.E. 371, 457].

2. Corporate Judgment Debtors shall be represented by counsel at the show cause hearing. See Nyesa Costa Rica v. Wilson Cap. Grp. Holdings, LLC, No. 11-CV-22036, 2012 WL 1492344, at \*3 (S.D. Fla. 2012) ("It is a well-established principle that 'a corporation cannot represent itself and must be represented by counsel.'") (internal citation omitted).

3. Instructions for the Zoom video conference will be emailed to counsel for Plaintiffs prior to the show cause hearing.

4. Plaintiffs shall serve a copy of this Order and the Court's instructions for the Zoom video conference on Judgment Debtors Muszynski, 1701, and AUH20 and shall file proof of such service before the hearing date.

DONE AND ORDERED in Chambers at Miami, Florida this 15th day of May, 2023.



ALICIA M. OTAZO-REYES  
UNITED STATES MAGISTRATE JUDGE

Copies via CM/ECF to:

United States District Judge Beth Bloom  
Counsel of Record  
Garnishees served by Plaintiffs as instructed herein



## EXHIBIT 12

### CHRONOLOGY OF AUTOMATIC STAY VIOLATIONS AS OF 4 JUNE 2023

Automatic Stay effective 9:03 a.m., 11 May 2023

1. 12 May, 10:30 a.m., hearing commences before Magistrate Judge Alicia M. Otazo-Reyes.
2. 12 May, 10:32 a.m., Document #479 entered; Culpepper/Rothman: CLERK'S NOTICE re [469] Notice re Hearing by Attorney. The Discovery Hearing set for 5/15/2023 at 2:30 PM before Magistrate Judge Alicia M. Otazo-Reyes shall be conducted by Zoom video conference.
3. 12 May, 10:43 a.m., Attorneys present at hearing: Kerry S. Culpepper and Angela Nieves on behalf of Plaintiffs. Charles Muszynski, pro se. Muszynski stated, as soon as he was permitted to speak at 9:43 a.m., that an Automatic Stay was in place from the Texas Bankruptcy Court.
4. 12 May, 10:50 a.m., hearing before Judge Otazo-Reyes, Muszynski notified Court and attorneys present that he emailed copies of the Bankruptcy Court's Automatic Stay notice to Culpepper and Presiding Judge Bloom.
5. 12 May, 11:26 a.m., Document #480, a PAPERLESS Minute Entry is made on record by court for Zoom proceedings held before Magistrate Judge Alicia M. Otazo-Reyes: Show Cause Hearing held on 5/12/2023. Exhibits at D.E. 475 admitted. Total time in court: 15 minutes. Attorney Appearance(s): Kerry S. Culpepper and Angela Nieves appeared on behalf of Plaintiffs. Charles Muszynski appeared pro se. Report and Recommendation to follow.
6. 12 May, 1:04 p.m., Stephanie Lee of Magistrate's court emails Zoom conference instructions for hearing set for 5/15/23 at 2:30 P.M. before Magistrate Judge Otazo-Reyes in Millennium Funding, Inc. et al.
7. 12 May, 2:06 p.m., Document 481 entered; PAPERLESS Minute Entry for Zoom proceedings held before Magistrate Judge Alicia M. Otazo-Reyes: Motion Hearing held on 5/12/2023 re [438] MOTION for Attorney Fees filed by GLO-JET INTERNATIONAL HOLDINGS (PUERTO RICO) LLC, GLO-JET INTERNATIONAL CORP. Total time in court: 47 minutes. Attorney Appearance(s): Kerry S. Culpepper and Angela Nieves appeared on behalf of Plaintiffs. Allan Amir Rivera Fernandez appeared on behalf of Garnishees GLO-JET INTERNATIONAL HOLDINGS (PUERTO RICO) LLC, GLO-JET INTERNATIONAL CORP. Glo-Jet Corporate Representative, Andy Keesee was present. Defendant Charles Muszynski was present. Order to follow.

8. 12 May, 2:18 p.m., Document 483 entered; ORDER re [466] Notice re Hearing by Attorney. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/12/2023. Court Order to Muszynski to respond to Plaintiffs' Interrogatories.
9. 12 May, 3:01 p.m., Document 484 entered; REPORT AND RECOMMENDATION re [459] MOTION for Final Default Judgment of Garnishment (Order to Show Cause Hearing why Default Judgment Should Not Be Granted Against Garnishees Jan Dash, Grant Thornton, F.A. Hayek Irrev. Settlement Trust, Southpac Trust Limited and Southpac Trust Nevis Limited). Objections to R&R due by 5/26/2023. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/12/2023.
10. 12 May, 11:27 a.m., Muszynski's email to Judge Bloom, Culpepper, and Rothman:

*Good morning Judge Bloom:*

*I attended the 10:30 a.m. hearing in Magistrate Judge Otazo-Reyes' court this morning.*

*After proceedings' opening formalities were complete and given an opportunity to speak, I notified the Court that as of 10:43 a.m. Eastern, an immediate stay of all collection proceedings was in place. Judge Otazo-Reyes and Mr. Culpepper ignored the notice and proceeded with the hearing, claiming "no notice in the court record of any stay".*

*At 10:50 a.m., Kerry Culpepper, representing himself and the plaintiffs (an officer of the Court), was emailed a copy of the filing's notice email from the Eastern District Texas Bankruptcy Court.*

*As you likely know, a bankruptcy stay is automatic and pervasive the moment it is entered. Attached is documentation from the Texas Court verifying my statements at 10:45 this morning to the Court.*

*As such, both Mr. Culpepper and Judge Otazo-Reyes proceeded to violate the stay on the record.*

*I will be making discrete record of each violation of the stay in order to seek appropriate sanctions in the Texas court.*

*As I am denied a level playing field and cannot electronically file documents as can the Court and Mr. Culpepper, these documents will be mailed along with the attached "Suggestion of Bankruptcy" to the Court and Mr. Culpepper.*

*Sincerely,*

*Charles Muszynski  
Pro se litigant in a US Court*

11. 12 May, 3:10 p.m., Muszynski email to Culpepper:

*Mr. Culpepper:*

*This email is the FIFTH demand that you cease you and your clients' willful violations of the automatic stay issued by the U.S. Bankruptcy Court, East Texas Division for Case: 23-90112.*

*FIRST, you were verbally informed during the 10:30 a.m. Zoom hearing in front of Magistrate Judge Otazo-Reyes that an automatic stay had been issued; at 10:43 a.m. during the hearing.*

*SECOND, you were provided notice via a 10:50 a.m. Eastern email that included documentation from the Bankruptcy Court evidencing the case number and filing information. You ignored the verbal notice at the onset of the 10:30 hearing and ignored the emailed documentation of the Court's automatic stay and continued to make multiple violations of the stay throughout the conclusion of the hearing (a transcript has been requested to document each violation).*

*THIRD, you received notice (and a second email) sent to you and Judge Bloom at 11:27 a.m. notifying you that conducting the 11:30 a.m. Eastern hearing would further violate the automatic stay.*

*FOURTH, another verbal notice was made at the onset of the 11:30 hearing, notifying you and the Court that an automatic stay had been made at 10:43 a.m., that I was participating under duress and despite my objections so as not to disrespect the Court's requirement for attendance. You conducted the hearing willfully and with knowledge of the Automatic Stay and made multiple, willful violations of the stay again through the hearing (a transcript has been requested to document each violation).*

*I will present the email and transcript evidence to the Bankruptcy Court to perfect and request sanctions, fines, and your incarceration for contemptuousness before the Bankruptcy Court's explicit order. Defendants Suggestion of Bankruptcy was provided to you before the 11:30 hearing (yet you proceeded anyway) and copies are attached again.*

*Cease your continuing collection activities per the Court's Order; each and every violation will be cataloged, presented, and a request for sanctions made.*

*Sincerely,*

*Charles Muszynski  
Pro se litigant in a US Court"*

12. 12 May, 8:14 p.m., email from Culpepper to Muszynski with attachment of filing Document 487 in new court filing.
13. 15 May, 1:08 p.m., Document 486 entered; Supplemental REPLY to Response to Motion re [467] Second MOTION for Order to Show Cause Hearing Why Judgment Debtors Should Not Be Held in Civil Contempt for Violating the Jan. 24. 2023 Order and the April 11, 2023 Order; and Motion for Standing Order filed by Rothman
14. 15 May, 4:18 p.m.; Document 487 entered; ORDER Setting Hearing on [467] Second MOTION for Order to Show Cause Hearing Why Judgment Debtors Should Not Be Held in Civil Contempt for Violating the Jan. 24. 2023 Order and the April 11, 2023 Order; and Motion for Standing Order. The Show Cause Hearing is hereby set for 6/1/2023 at 10:30 AM in Miami Division before Magistrate Judge Alicia M. Otazo-Reyes.

15. 15 May, 5:16 p.m.; PAPERLESS Minute Entry for proceedings held before Magistrate Judge Alicia M. Otazo-Reyes: Discovery Hearing held on 5/15/2023 (2:30 - 2:34). Plaintiffs' request was withdrawn. Total time in court: 4 minutes. Attorney Appearance(s): Kerry S. Culpepper for Plaintiffs.
16. 15 May, 8:11 p.m.; Document 489 entered; Notice of Electronic Filing entered by Joel Rothman, Certificate of Service.
17. 24 May, 7:17 p.m.; Document 492 entered; Joint Motion to Set Aside Writ of Garnishment, Joel Rothman.
18. 24 May, 7:24 p.m.; email to Judge Bloom with proposed Order; Joel Rothman, Kerry Culpepper.
19. 26 May; Document 493 entered; Set aside of Southpac default judgment for \$15M after Southpac violated Cook Island and Nevis laws and turned over documents violative of attorney-client privilege to Culpepper, upon which Culpepper continues to fashion statements and filings.
20. 31 May; Document 497 entered; Plaintiffs' Motion to stay; Joel Rothman, Kerry Culpepper; requesting the District Court not honor the Bankruptcy Court's Stay. Footnote 1 in filing states:  
  
"1. Plaintiffs' counsel Kerry Culpepper filed the motion on behalf of himself as a creditor (*emphasis added*) on May 31, 2023. Plaintiffs have been hindered in promptly filing a motion by Mr. Muszynski's baseless filing of an opposition to Kerry Culpepper's motion for *pro hac vice* admission to the E.D. Tx Bankruptcy Court."  
  
Muszynski has never owed Culpepper. Culpepper's pro se filing is without standing and further evidences his abuses.
21. 5 June 2023; Document 501; Culpepper and Rothman filed: "PLAINTIFFS' MOTION REQUESTING JUDICIAL NOTICE OF FILING AND/OR CONSIDERATION OF SUPPLEMENTAL EVIDENCE IN OPPOSITION TO GARNISHEES' MOTION FOR ATTORNEY'S FEES [DOC. #453] AND INCORPORATED MEMORANDUM OF LAW".
22. 5 June 2023; Document 501-3; Culpepper and Rothman filed: "ORDER GRANTING PLAINTIFFS' MOTION REQUESTING JUDICIAL NOTICE OF FILING AND/OR CONSIDERATION OF SUPPLEMENTAL EVIDENCE IN OPPOSITION TO GARNISHEES' MOTION FOR ATTORNEY'S FEES [DOC. #453].
23. 11 May 2023 – present; Continuing emails from Culpepper to Muszynski regarding collection claims in the District Court case; so far 5 emails.
24. 31 May 2023; Culpepper

## EXHIBIT 13

### CHRONOLOGY OF AUTOMATIC STAY VIOLATIONS AS OF 4 JUNE 2023

Automatic Stay effective 9:03 a.m., 11 May 2023

1. 12 May, 10:30 a.m., hearing commences before Magistrate Judge Alicia M. Otazo-Reyes.
2. 12 May, 10:32 a.m., Document #479 entered; Culpepper/Rothman: CLERK'S NOTICE re [469] Notice re Hearing by Attorney. The Discovery Hearing set for 5/15/2023 at 2:30 PM before Magistrate Judge Alicia M. Otazo-Reyes shall be conducted by Zoom video conference.
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*I will be making discrete record of each violation of the stay in order to seek appropriate sanctions in the Texas court.*

*As I am denied a level playing field and cannot electronically file documents as can the Court and Mr. Culpepper, these documents will be mailed along with the attached "Suggestion of Bankruptcy" to the Court and Mr. Culpepper.*

*Sincerely,*

*Charles Muszynski  
Pro se litigant in a US Court*

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*Mr. Culpepper:*

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*I will present the email and transcript evidence to the Bankruptcy Court to perfect and request sanctions, fines, and your incarceration for contemptuousness before the Bankruptcy Court's explicit order. Defendants Suggestion of Bankruptcy was provided to you before the 11:30 hearing (yet you proceeded anyway) and copies are attached again.*

*Cease your continuing collection activities per the Court's Order; each and every violation will be cataloged, presented, and a request for sanctions made.*

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19. 26 May; Document 493 entered; Set aside of Southpac default judgment for \$15M after Southpac violated Cook Island and Nevis laws and turned over documents violative of attorney-client privilege to Culpepper, upon which Culpepper continues to fashion statements and filings.
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"1. Plaintiffs' counsel Kerry Culpepper filed the motion on behalf of himself as a creditor (*emphasis added*) on May 31, 2023. Plaintiffs have been hindered in promptly filing a motion by Mr. Muszynski's baseless filing of an opposition to Kerry Culpepper's motion for *pro hac vice* admission to the E.D. Tx Bankruptcy Court."  
  
Muszynski has never owed Culpepper. Culpepper's pro se filing is without standing and further evidences his abuses.
21. 5 June 2023; Document 501; Culpepper and Rothman filed: "PLAINTIFFS' MOTION REQUESTING JUDICIAL NOTICE OF FILING AND/OR CONSIDERATION OF SUPPLEMENTAL EVIDENCE IN OPPOSITION TO GARNISHEES' MOTION FOR ATTORNEY'S FEES [DOC. #453] AND INCORPORATED MEMORANDUM OF LAW".
22. 5 June 2023; Document 501-3; Culpepper and Rothman filed: "ORDER GRANTING PLAINTIFFS' MOTION REQUESTING JUDICIAL NOTICE OF FILING AND/OR CONSIDERATION OF SUPPLEMENTAL EVIDENCE IN OPPOSITION TO GARNISHEES' MOTION FOR ATTORNEY'S FEES [DOC. #453].
23. 11 May 2023 – present; Continuing emails from Culpepper to Muszynski regarding collection claims in the District Court case; so far 5 emails.
24. 31 May 2023; Culpepper



## EXHIBIT 14

Certificate Number: 03621-TXE-CC-037426385



03621-TXE-CC-037426385

### CERTIFICATE OF COUNSELING

I CERTIFY that on May 13, 2023, at 11:26 o'clock AM EDT, Charles Muszynski received from Credit Card Management Services, Inc. d/b/a Debthelper.com, an agency approved pursuant to 11 U.S.C. 111 to provide credit counseling in the Eastern District of Texas, an individual [or group] briefing that complied with the provisions of 11 U.S.C. 109(h) and 111.

A debt repayment plan was not prepared. If a debt repayment plan was prepared, a copy of the debt repayment plan is attached to this certificate.

This counseling session was conducted by internet.

Date: May 13, 2023 By: /s/Nicola ButtsWimpel

Name: Nicola ButtsWimpel

Title: Credit Counselor

\* Individuals who wish to file a bankruptcy case under title 11 of the United States Bankruptcy Code are required to file with the United States Bankruptcy Court a completed certificate of counseling from the nonprofit budget and credit counseling agency that provided the individual the counseling services and a copy of the debt repayment plan, if any, developed through the credit counseling agency. See 11 U.S.C. 109(h) and 521(b).

## EXHIBIT 14-A

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

MILLENNIUM FUNDING, INC.,  
a Nevada corporation, *et al.*,

Plaintiffs,

v.

1701 MANAGEMENT LLC d/b/a  
LIQUIDVPN, a Puerto Rico limited  
liability company, *et al.*,

Defendants.

#### FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

**THIS CAUSE** is before the Court upon the Plaintiffs' Motion for Final Default Judgment against Defendants 1701 Management LLC d/b/a/ LiquidVPN, AUH2O LLC and Charles Muszynski a/k/a Frederick Douglas, ECF No. [210] ("Motion"), filed on March 24, 2022. The Motion was granted in part and denied in part by a prior Order. Pursuant to Federal Rule of Civil Procedure 58(a), the Court enters this separate Final Default Judgment.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Final Default Judgment is entered in favor of Plaintiffs MILLENNIUM FUNDING, INC., VOLTAGE HOLDINGS, LLC, AMBI DISTRIBUTION CORP., AFTER PRODUCTIONS, LLC, AFTER II MOVIE, LLC, MORGAN CREEK PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., BEDEVILED LLC, MILLENNIUM MEDIA, INC., COLOSSAL MOVIE PRODUCTIONS, LLC, YAR PRODUCTIONS, INC., FSMQ FILM, LLC, FW PRODUCTIONS, LLC, MILLENNIUM IP, INC., I AM WRATH PRODUCTION, INC., KILLING LINK DISTRIBUTION, LLC, BADHOUSE STUDIOS,

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

LLC, LF2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., VENICE PI, LLC, RAMBO V PRODUCTIONS, INC., RUPTURE CAL, INC., MON, LLC, SF FILM, LLC, SPEED KILLS PRODUCTIONS, INC., MILLENNIUM IP, INC., NIKOLA PRODUCTIONS, INC., WONDER ONE, LLC, BODYGUARD PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., GLACIER FILMS 1, LLC, DEFINITION DELAWARE LLC, HANNIBAL CLASSICS INC., JUSTICE EVERYWHERE PRODUCTIONS LLC, STATE OF THE UNION DISTRIBUTION AND COLLECTIONS, LLC, PARADOX STUDIOS, LLC, DALLAS BUYERS CLUB, LLC, HITMAN TWO PRODUCTIONS, INC., SCREEN MEDIA VENTURES, LLC, and 42 VENTURES, LLC (collectively, "Plaintiffs") and against Defendants 1701 MANAGEMENT LLC d/b/a LIQUIDVPN, AUH2O LLC, and CHARLES MUSZYNSKI a/k/a FREDERICK DOUGLAS (collectively, "Defendants") on Counts II-III (contributory infringement by inducement and material contribution), Count IV (vicarious infringement), Count V (secondary liability for DMCA violations), Count IX (trademark infringement), Count X (unfair competition), Count XI (breach of contract), and Count XIII (breach of publicity) pled against Defendants in the Second Amended Complaint, ECF No. [96], as follows:

- a. Permanent Injunction ordering conduct: Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI, their officers, directors, employees, agents, subsidiaries, distributors, and all persons acting in concert and participation with Defendants are ordered to:
  - i. block their end users from accessing the following notorious piracy websites of foreign origin that are listed in the annual trade report of Notorious Foreign

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

- Markets published by the United States Government: (i) YTS.MX; (ii) piratebay.org; (iii) rarbg.to; (iv) 1337x.tw; and (v) popcorn-time.ga on networks under their control and any known proxy websites thereof; and
- ii. to adopt a policy that provides for the prompt termination of end user accounts for which they receive more than three (3) notices of infringements of Plaintiffs' copyright protected Works, attached hereto as Exhibit 1, and said end users fail to provide a counter-notification;
- b. Permanent Injunction restraining conduct: Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI, their officers, directors, employees, agents, subsidiaries, distributors, and all persons acting in concert and participation with Defendants are permanently restrained and enjoined from:
- i. infringing to and/or contributing to infringements of Plaintiffs' Works;
- ii. promoting and encouraging their end users to use the LiquidVPN service as a means to conceal use of Popcorn Time and movie piracy websites such as the Pirate Bay for pirating Plaintiffs' Works and promoting their service as "Popcorn Time VPN" in violation of Plaintiff 42 Ventures LLC's trademark;
- iii. displaying the title art of Plaintiff MILLENNIUM FUNDING, INC.'s work *Survivor* on their website; and
- iv. referring to DAVID COX or his dissolved corporation LiquidVPN in any manner that falsely portrays him and his dissolved corporation as playing a role in the operations of LiquidVPN on their website;
- c. Statutory Damages for trademark infringement pursuant to 15 U.S.C. § 1117(c): Plaintiff 42 VENTURES, LLC is entitled to an award of statutory damages of

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

**\$250,000.00** against Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI jointly and severally;

- d. Statutory Damages for copyright infringements pursuant to 17 U.S.C. § 504(c): Plaintiffs MILLENNIUM FUNDING, INC., VOLTAGE HOLDINGS, LLC, AMBI DISTRIBUTION CORP., AFTER PRODUCTIONS, LLC, AFTER II MOVIE, LLC, MORGAN CREEK PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., BEDEVILED LLC, MILLENNIUM MEDIA, INC., COLOSSAL MOVIE PRODUCTIONS, LLC, YAR PRODUCTIONS, INC., FSMQ FILM, LLC, FW PRODUCTIONS, LLC, MILLENNIUM IP, INC., I AM WRATH PRODUCTION, INC., KILLING LINK DISTRIBUTION, LLC, BADHOUSE STUDIOS, LLC, LF2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., VENICE PI, LLC, RAMBO V PRODUCTIONS, INC., RUPTURE CAL, INC., MON, LLC, SF FILM, LLC, SPEED KILLS PRODUCTIONS, INC., MILLENNIUM IP, INC., NIKOLA PRODUCTIONS, INC., WONDER ONE, LLC, BODYGUARD PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., GLACIER FILMS 1, LLC, DEFINITION DELAWARE LLC, HANNIBAL CLASSICS INC., JUSTICE EVERYWHERE PRODUCTIONS LLC, STATE OF THE UNION DISTRIBUTION AND COLLECTIONS, LLC, PARADOX STUDIOS, LLC, DALLAS BUYERS CLUB, LLC, HITMAN TWO PRODUCTIONS, INC., and SCREEN MEDIA VENTURES, LLC are awarded maximum statutory damages of **\$9,900,000.00** (\$150,000.00 for the infringement of each of the sixty-six (66) Works) against Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES

Case No. 21-cv-20862-BLOOM/Otazo-Reyes

MUSZYNSKI jointly and severally for direct copyright infringement, contributory copyright infringement and vicarious infringement;

- e. Statutory Damages for DMCA violations pursuant to 17 U.S.C. § 1203(c)(3)(B):
- Plaintiffs MILLENNIUM FUNDING, INC., VOLTAGE HOLDINGS, LLC, AMBI DISTRIBUTION CORP., AFTER PRODUCTIONS, LLC, AFTER II MOVIE, LLC, MORGAN CREEK PRODUCTIONS, INC., MILLENNIUM FUNDING, INC., BEDEVILED LLC, MILLENNIUM MEDIA, INC., COLOSSAL MOVIE PRODUCTIONS, LLC, YAR PRODUCTIONS, INC., FSMQ FILM, LLC, FW PRODUCTIONS, LLC, MILLENNIUM IP, INC., I AM WRATH PRODUCTION, INC., KILLING LINK DISTRIBUTION, LLC, BADHOUSE STUDIOS, LLC, LF2 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., VENICE PI, LLC, RAMBO V PRODUCTIONS, INC., RUPTURE CAL, INC., MON, LLC, SF FILM, LLC, SPEED KILLS PRODUCTIONS, INC., MILLENNIUM IP, INC., NIKOLA PRODUCTIONS, INC., WONDER ONE, LLC, BODYGUARD PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC., GLACIER FILMS 1, LLC, DEFINITION DELAWARE LLC, HANNIBAL CLASSICS INC., JUSTICE EVERYWHERE PRODUCTIONS LLC, STATE OF THE UNION DISTRIBUTION AND COLLECTIONS, LLC, PARADOX STUDIOS, LLC, DALLAS BUYERS CLUB, LLC, HITMAN TWO PRODUCTIONS, INC., and SCREEN MEDIA VENTURES, LLC are awarded maximum statutory damages of **\$4,950,000.00** (\$25,000.00 for the three (3) violations of the copyright management integrity of file copies of each of the sixty-six (66) Works) against Defendants 1701

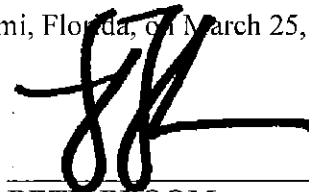
Case No. 21-cv-20862-BLOOM/Otazo-Reyes

MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI jointly and severally for contributing to DMCA violations;

- f. Damages for breach of contract: Plaintiffs MILLENNIUM FUNDING, INC. and VOLTAGE HOLDINGS, LLC are awarded damages of **\$46,540.00** against Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI jointly and severally for breach of contract;
- g. Damages for breach of statutory and common law right of publicity: Plaintiffs MILLENNIUM FUNDING, INC. and VOLTAGE HOLDINGS, LLC are awarded **\$25,863.00** against Defendants 1701 MANAGEMENT LLC, AUH2O LLC, and CHARLES MUSZYNSKI jointly and severally for breach of the publicity rights of DAVID COX; and
- h. Interest from the date this action was filed shall accrue at the legal rate pursuant to 28 U.S.C. § 1961.

- 2. The Court orders execution to issue for this Final Default Judgment.
- 3. The Court denies all relief not granted in this Final Default Judgment.
- 4. The Court retains jurisdiction to enforce this Final Default Judgment.
- 5. To the extent not otherwise disposed of, any pending motions are **DENIED AS MOOT** and all pending deadlines are **TERMINATED**.
- 6. The Clerk of Court is directed to **CLOSE** this case.

**DONE AND ORDERED** in Chambers at Miami, Florida, on March 25, 2022.



BETH BLOOM  
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record